

# **ATTACHMENT 3**

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Armstrong, Jeffrey

March 13, 2014

1

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

-----)

IN RE: PROCESSED EGG PRODUCTS )

ANTITRUST LITIGATION )

-----) MDL NO. 2002

THIS DOCUMENT RELATES TO ) 08-md-02002

Kroger, Inc. v. United Egg )

Producers, et al., ) HIGHLY

No. 2:10-cv-06705GP ) CONFIDENTIAL

\*\*\*\*\*

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

TWENTY-NINTH JUDICIAL DISTRICT

ASSOCIATED WHOLESALE )

GROCERS, INC., et al., )

Plaintiffs, )

-vs- ) CAUSE NO.

) 10-CV-2171

UNITED EGG PRODUCERS, et )

al., )

Defendants. )

DEPOSITION OF JEFFREY ARMSTRONG, PH.D.

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<p style="text-align: right;">2</p> <p>1 The videotaped deposition upon oral  2 examination of JEFFREY ARMSTRONG, PH.D., a witness  3 produced and sworn before me, Tara Gandel Hudson,  4 RPR, CRR, CSR 93-R-1039, a Notary Public in and for  5 the County of Marion, State of Indiana, taken on  6 behalf of the defendants United Egg Producers and  7 United States Egg Marketers at the offices of  8 STUART &amp; BRANIGIN, 300 Main Street, Lafayette,  9 Tippecanoe County, Indiana, on the 13th day of  10 March, 2014, commencing at the hour of 8:38 a.m.,  11 pursuant to the Federal Rules of Civil Procedure  12 and the Kansas Rules of Civil Procedure with  13 written notice as to the time and place thereof  14 having been given.  15  16  17  18  19  20  21  22</p>	<p style="text-align: right;">4</p> <p>1 On behalf of the Kraft Plaintiffs:  2 RICHARD CAMPBELL, ESQ.  3 (Appearing telephonically)  4 STEPHEN R. BROWN, ESQ.  5 (Appearing telephonically)  6 Jenner &amp; Block  7 353 N. Clark Street  8 Chicago, IL 60654  9 312/923-2818  10 312/840-7282  11 rcampbell@jenner.com  12 stephenbrown@jenner.com  13  14 On behalf of the Kroger Plaintiffs:  15 DOUGLAS H. PATTON, ESQ.  16 (Appearing telephonically)  17 Kenny Nachwalter  18 1100 Miami Center  19 201 South Biscayne Boulevard  20 Miami, FL 33131  21 305/737-1000  22 dpatton@knpa.com</p>
<p style="text-align: right;">3</p> <p>1 <b>APPEARANCES:</b>  2  3 On behalf of the direct purchaser Plaintiffs:  4 STEIG D. OLSON, ESQ.  5 Quinn Emanuel Urquhart &amp; Sullivan  6 51 Madison Avenue  7 22nd Floor  8 New York, NY 10010  9 212/849-7152  10 steigolson@quinnemanuel.com  11  12 On behalf of the Plaintiffs (Kansas):  13 RACHEL M. SCHWARTZ, ESQ.  14 Stueve Siegel Hanson, LLP  15 460 Nichols Road  16 Suite 20  17 Kansas City, MO 64112  18 816/714-7125  19 schwartz@stuevesiegel.com  20  21  22</p>	<p style="text-align: right;">5</p> <p>1  2 On behalf of the indirect purchaser Plaintiffs:  3 MARK J. SCHIRMER, ESQ.  4 Straus &amp; Boles, LLP  5 4041 University Avenue  6 Fairfax, VA 22030  7 901/818-3146  8 mschirmer@strauss-boies.com  9  10 On behalf of the Defendants United Egg Producers  11 and United States Egg Marketers:  12 ROBIN P. SUMNER, ESQ.  13 EVAN W. DAVIS, ESQ.  14 Pepper Hamilton, LLP  15 3000 Two Logan Square  16 Eighteenth &amp; Arch Streets  17 Philadelphia, PA 19103  18 215/981-4652  19 215/981-4245  20 sumnerr@pepperlaw.com  21 davisw@pepperlaw.com  22</p>

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<p style="text-align: right;">6</p> <p>1 2 On behalf of the Defendant Sparboe Farms, Inc.: 3 MATTHEW HARTUNG, ESQ. 4 (Appearing telephonically) 5 Hutchinson, PA 6 1907 E. Wayzata Boulevard 7 Suite 330 8 Wayzata, MN 55391 9 952/215-0141 10 mhartung@hutchinsonlegal.com 11 12</p> <p>13 On behalf of Defendant Midwest Poultry Services: 14 15 E. JASON BURKE, ESQ. 16 (Appearing telephonically) 17 18 Faegre Baker Daniels 19 20 311 S. Wacker Drive 21 Suite 4400 22 Chicago, IL 60606 312/212-2264 jasonburke@faegreBD.com</p>	<p style="text-align: right;">8</p> <p>1 On behalf of the Defendant Rose Acre Farms: 2 DONALD M. BARNES, ESQ. 3 (Appearing telephonically) 4 KARRI ALLEN, ESQ. 5 (Appearing by text streaming) 6 Porter Wright 7 1900 K Street, NW 8 Suite 1110 9 Washington, D.C. 20006 10 202/778-3056 11 202/778-3059 12 dbarnes@porterwright.com 13 kallen@porterwright.com 14</p> <p>15 On behalf of the Defendant Daybreak Foods: 16 ADRIAN FONTECILLA, ESQ. 17 (Appearing telephonically) 18 Crowell &amp; Moring, LLP 19 1001 Pennsylvania Ave., NW 20 Washington, D.C. 20004 21 202/624-2803 22 afontecilla@crowell.com</p>
<p style="text-align: right;">7</p> <p>1 2 On behalf of the Defendant NuCal Foods, Inc.: 3 MARGARET ZIEMIANEK, ESQ. 4 (Appearing telephonically) 5 Kasowitz Benson Torres &amp; Friedman, LLP 6 101 California Street 7 Suite 2300 8 San Francisco, CA 94111 9 415/655-4335 10 mziemianek@kasowitz.com 11</p> <p>12 On behalf of the Defendants Michael Foods, Inc., 13 and Papetti's Hygrade Egg Products, Inc.: 14 15 CARRIE MAHAN ANDERSON, ESQ. 16 (Appearing telephonically) 17 18 Weil Gotshal &amp; Manges 19 20 1300 Eye Street, NW 21 Suite 900 22 Washington, D.C. 20005 202/682-7231 carrie.anderson@weil.com</p>	<p style="text-align: right;">9</p> <p>1 2 On behalf of the Defendants Moarck, LLC, and Norco 3 Ranch, Inc.: 4 5 ARIN ARAGONA, ESQ. 6 (Appearing telephonically) 7 8 Eimer Stahl 9 10 224 S. Michigan Avenue 11 Suite 1100 12 Chicago, IL 60604 13 312/660-7679 14 aaragona@eimerstahl.com 15</p> <p>16 On behalf of the Witness: 17 18 WILLIAM P. KEALEY, ESQ. 19 20 Stuart &amp; Branigin, LLP 21 22 300 Main Street Suite 900 Lafayette, IN 47902 765/423-1561 wpk@stuartlaw.com</p> <p>ALSO PRESENT: Sara Williams, Videographer</p>

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<p style="text-align: right;">15</p> <p>1 THE VIDEOGRAPHER: This is the video</p> <p>2 deposition of Dr. Jeffrey Armstrong in the matter</p> <p>3 of "Associated Wholesale Grocers, Inc., et al.,</p> <p>4 versus United Egg Producers, et al.," in the</p> <p>5 District Court of Wyandotte County, Kansas,</p> <p>6 Twenty-ninth Judicial District.</p> <p>7 Case No. 10-cv-2171.</p> <p>8 Also, In Re: Processed Egg Products</p> <p>9 Antitrust Litigation. This document relates to</p> <p>10 "Kroger Inc., versus United Egg Producers, et</p> <p>11 al." Number 2:10-CV-06705GP in the United States</p> <p>12 District Court for the Eastern District of</p> <p>13 Pennsylvania. MDL No. 2002 08-md-02002.</p> <p>14 This deposition is being held at Stuart</p> <p>15 and Branigin, 300 Main Street, Suite 900,</p> <p>16 Lafayette, Indiana, on Thursday, March 13, 2014.</p> <p>17 My name is Sara Williams, I am the</p> <p>18 video specialist. The court reporter is Tara</p> <p>19 Hudson. We represent Henderson Legal Services.</p> <p>20 The time is 8:38 a.m., and we're on the</p> <p>21 record.</p> <p>22 Counsel will now state their</p>	<p style="text-align: right;">17</p> <p>1 MR. BURKE: Jason Burke with Faegre</p> <p>2 Baker Daniels on behalf of Midwest Poultry</p> <p>3 Services.</p> <p>4 MS. ZIEMIANEK: Margaret Ziemianek,</p> <p>5 Kasowitz Benson Torres &amp; Friedman, on behalf of</p> <p>6 NuCal Foods.</p> <p>7 MR. PATTON: Douglas Patton with the</p> <p>8 firm of Kenny Nachwalter, on behalf of the Kroger</p> <p>9 plaintiffs.</p> <p>10 MR. FONTECILLA: Adrian Fontecilla with</p> <p>11 Crowell &amp; Moring, on behalf of Daybreak Foods.</p> <p>12 MR. BROWN: Stephen Brown from Jenner &amp;</p> <p>13 Block on behalf of the Kraft plaintiffs in the</p> <p>14 federal action in Pennsylvania.</p> <p>15 MR. BARNES: Don Barnes on behalf of</p> <p>16 Rose Acre Farms. I'm with the Washington, D.C.,</p> <p>17 office of Porter Wright. And good morning to</p> <p>18 Dr. Armstrong and good morning to everyone else.</p> <p>19 MS. ANDERSON: Carrie Mahan Anderson</p> <p>20 with Weil Gotshal on behalf of Michael Foods and</p> <p>21 Papetti's Hygrade Egg Products.</p> <p>22 MR. ARAGONA: Arin Aragona of Eimer</p>

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<p style="text-align: right;">18</p> <p>1 Stahl on behalf of Moarck, LLC, and Norco Ranch, 2 Inc.</p> <p>3 THE VIDEOGRAPHER: Court reporter, 4 please swear in the witnesses.</p> <p>5 JEFFREY ARMSTRONG, PH.D., 6 having been first duly sworn to tell the truth, the 7 whole truth and nothing but the truth relating to 8 said matter, was examined and testified as follows:</p> <p>9 MR. OLSON: I before we get started, 10 Robin, just to put on the record, I assume 11 there's no objection that if I make an objection, 12 it will be for all the other plaintiffs' counsel 13 here; we don't all have to make objections?</p> <p>14 MS. SUMNER: That's fine.</p> <p>15 DIRECT EXAMINATION, 16 QUESTIONS BY ROBIN P. SUMNER: 17 Q Good morning, Dr. Armstrong. My name 18 is Robin Sumner. I'm with the law firm of Pepper 19 Hamilton in Philadelphia, and I represent 20 defendants United Egg Producers and United States 21 Egg Marketers in these antitrust actions that 22 have been field in the Eastern District of</p>	<p style="text-align: right;">20</p> <p>1 Q And if you'd like to take a break at 2 any time, just please let me know, and, so long 3 as there's not an active question pending, we can 4 stop and take a quick break.</p> <p>5 A Okay.</p> <p>6 Q Would you please state your full name 7 for the record.</p> <p>8 A Jeffrey Dyer Armstrong.</p> <p>9 Q I'd like to mark this as the first 10 exhibit.</p> <p>11 (Deposition Exhibit 1 was marked for 12 identification.)</p> <p>13 MS. SUMNER: For the record, I've 14 marked as Armstrong Exhibit 1 a document -- 15 confidential document bearing the Bates numbers 16 UE057131 through 7154.</p> <p>17 Q Dr. Armstrong, could you please take a 18 moment and look at this document and then let me 19 know if you recognize the document.</p> <p>20 A Yes. I do.</p> <p>21 Q What is this document?</p> <p>22 A It's my curriculum vitae.</p>
<p style="text-align: right;">19</p> <p>1 Pennsylvania and in Kansas state court. 2 Have you had your deposition taken 3 before?</p> <p>4 A No.</p> <p>5 Q Do you understand that you're here 6 today to testify under oath?</p> <p>7 A Yes.</p> <p>8 Q I'll be asking you a series of 9 questions today, and you'll be giving me a series 10 of answers to those questions. If there's 11 something that you don't understand in the 12 question, I'd ask that you speak up and let me 13 know; otherwise, I'm going to assume that you 14 understand the question. Is that okay with you?</p> <p>15 Yes.</p> <p>16 MR. OLSON: And just for the record, 17 Mark Schirmer from the indirect purchaser 18 plaintiffs has just joined the proceedings.</p> <p>19 Q Dr. Armstrong, is there anything that 20 will prevent you from testifying here today 21 truthfully and accurately?</p> <p>22 A No.</p>	<p style="text-align: right;">21</p> <p>1 Q Did you prepare this document?</p> <p>2 A Yes. It looks to be dated around 2007.</p> <p>3 Q I'd like to direct your attention to 4 the first page of the CV where you have a section 5 entitled Higher Education.</p> <p>6 A Yes.</p> <p>7 Q Is that an accurate summary of your 8 educational background?</p> <p>9 A Yes.</p> <p>10 Q So you have a Bachelor of Science with 11 a major in Animal Science; is that correct?</p> <p>12 A Yes.</p> <p>13 Q What is animal science?</p> <p>14 A It's the study of all aspects of 15 animal -- animals. Typically it's farm animals, 16 domestic animals. Also includes companion 17 animals, zoo animals, exotic animals. But, by 18 and large, it's domestic -- domesticated food 19 animals, the study of their nutrition, 20 reproduction, et cetera.</p> <p>21 Q And then you also hold a Master's and a 22 Ph.D. in Physiology; is that correct?</p>

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<p style="text-align: right;">22</p> <p>1 <b>A Yes.</b></p> <p>2 Q And, Dr. Armstrong, what is physiology?</p> <p>3 <b>A It's the study of really how the</b></p> <p>4 <b>mammalian system, in this case, works.</b></p> <p>5 Q Prior to your attendance at Murray</p> <p>6 State beginning in 1977, did you have a</p> <p>7 background in animal agriculture?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Can you explain to me what that</p> <p>10 background was?</p> <p>11 <b>A I grew up on a small farm in western</b></p> <p>12 <b>Kentucky where we raised tobacco, different</b></p> <p>13 <b>crops, and different animals.</b></p> <p>14 Q Dr. Armstrong, are you currently</p> <p>15 employed?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And what is your -- where are you</p> <p>18 employed?</p> <p>19 <b>A I'm president of California Polytechnic</b></p> <p>20 <b>State University in San Luis Obispo, California.</b></p> <p>21 <b>That's part of the California State University</b></p> <p>22 <b>system.</b></p>	<p style="text-align: right;">24</p> <p>1 <b>A By and large it was local, state, and</b></p> <p>2 <b>national matters related to animal welfare and</b></p> <p>3 <b>looking at a holistic approach to sustainability</b></p> <p>4 <b>of food animal production.</b></p> <p>5 Q Were there specific animal populations</p> <p>6 that you focused on in that work?</p> <p>7 <b>A The majority was laying hen, laying hen</b></p> <p>8 <b>egg production.</b></p> <p>9 Q Any other specialties you had while you</p> <p>10 were at Michigan State University?</p> <p>11 <b>A Both as an individual but largely as a</b></p> <p>12 <b>professor and as dean, I worked on a broader</b></p> <p>13 <b>topics interactive with corporations on the whole</b></p> <p>14 <b>topic of social responsibility in food system.</b></p> <p>15 <b>Worked with different companies.</b></p> <p>16 Q What companies did you work with in</p> <p>17 that regard?</p> <p>18 <b>A McDonald's, Cargill, and, too, just</b></p> <p>19 <b>some visits to other companies. But those two</b></p> <p>20 <b>would have been the major. But not -- that's not</b></p> <p>21 <b>an inclusive list as I can't recall them all.</b></p> <p>22 Q Can you describe for me your work with</p>
<p style="text-align: right;">23</p> <p>1 Q And how long have you held that</p> <p>2 position?</p> <p>3 <b>A A little over three years.</b></p> <p>4 Q So beginning in approximately --</p> <p>5 <b>A February 1 of 2011.</b></p> <p>6 Q Thank you. And prior to becoming</p> <p>7 president of Cal Poly, what was your employment</p> <p>8 situation?</p> <p>9 <b>A From July 1 of 2011 until the end of</b></p> <p>10 <b>January -- from July 1 of 2001 -- from the end of</b></p> <p>11 <b>January 2011 I was dean of the College of</b></p> <p>12 <b>Agriculture and Natural Resources at Michigan</b></p> <p>13 <b>State University, also held the title of</b></p> <p>14 <b>professor.</b></p> <p>15 Q And as a professor at Michigan State</p> <p>16 did you have a specialty?</p> <p>17 <b>A Continued as a reproductive</b></p> <p>18 <b>physiologist, and then I worked in social</b></p> <p>19 <b>responsibility in the food system.</b></p> <p>20 Q And what -- describe for me your work</p> <p>21 with social responsibility in the food system</p> <p>22 while you were at Michigan State University.</p>	<p style="text-align: right;">25</p> <p>1 McDonald's during that time period?</p> <p>2 <b>A I served on McDonald's animal welfare</b></p> <p>3 <b>advisory board, and I also served on -- a larger</b></p> <p>4 <b>group of people that I don't recall the title of</b></p> <p>5 <b>the group, but it had to do with their corporate</b></p> <p>6 <b>social responsibility. We were a group of</b></p> <p>7 <b>advisers.</b></p> <p>8 Q What was McDonald's animal welfare</p> <p>9 advisory board?</p> <p>10 <b>A We provided advice on their different</b></p> <p>11 <b>policies and guidelines, which included egg</b></p> <p>12 <b>production and other areas.</b></p> <p>13 Q And when did you begin that work with</p> <p>14 McDonald's?</p> <p>15 <b>A I don't recall the exact date. It may</b></p> <p>16 <b>be in this document but I don't recall the exact</b></p> <p>17 <b>date. It would have been around 2001, 2002, or</b></p> <p>18 <b>maybe earlier.</b></p> <p>19 Q And at that time that you were serving</p> <p>20 on McDonald's animal welfare advisory board, what</p> <p>21 was McDonald's position on animal welfare?</p> <p>22 <b>A At the -- when I first started working</b></p>



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<p style="text-align: right;">26</p> <p>1 with McDonald's, they had a track record of</p> <p>2 working in animal welfare with Temple Grandin, so</p> <p>3 it was established.</p> <p>4 Q And did you have an understanding as to</p> <p>5 why animal welfare was something that McDonald's</p> <p>6 had constituted an advisory committee on at that</p> <p>7 point in time?</p> <p>8 A Most any group that was trying to be</p> <p>9 progressive and look to the future had -- they</p> <p>10 were embracing animal welfare much as companies</p> <p>11 have embraced food safety. It's a fundamental</p> <p>12 component at that time and I believe for the</p> <p>13 future.</p> <p>14 Q And what about your work with Cargill</p> <p>15 at that time; can you describe that for me,</p> <p>16 please?</p> <p>17 A That was related later. It was -- it</p> <p>18 was related to study that was initiated with</p> <p>19 Cargill and linked with McDonald's.</p> <p>20 Q And what was that study?</p> <p>21 A It was a study that looked at different</p> <p>22 types of egg production, and that study is</p>	<p style="text-align: right;">28</p> <p>1 A No, I don't recall the exact date, but</p> <p>2 it's in the -- it's in the last four or five</p> <p>3 years.</p> <p>4 Q And have there been any results or</p> <p>5 papers published in connection with that study?</p> <p>6 A Yes. There's a website that anyone in</p> <p>7 the general public can go to and review the</p> <p>8 results. I'm not conversant with the latest</p> <p>9 results.</p> <p>10 Q Do you know what the address of that</p> <p>11 website is?</p> <p>12 A No. Not right off. Not off hand. I</p> <p>13 can get it for you.</p> <p>14 Q And do you have an understanding as to</p> <p>15 why Cargill initiated that study?</p> <p>16 A We recommended the study.</p> <p>17 Q And when you say "we" --</p> <p>18 A Michigan State university and UC-Davis.</p> <p>19 We recommended. We suggested that the study be</p> <p>20 conducted.</p> <p>21 Q And why -- why did you suggest that?</p> <p>22 A Because knowledge was lacking.</p>
<p style="text-align: right;">27</p> <p>1 ongoing, and started just a few years ago. But</p> <p>2 we started planning it, as I recall, in -- four,</p> <p>3 five years ago.</p> <p>4 Q What was the purpose of that study, or</p> <p>5 what is the purpose of that study?</p> <p>6 A To look at different -- three different</p> <p>7 types of egg production from a holistic</p> <p>8 perspective.</p> <p>9 Q What are the types of egg production?</p> <p>10 A Aviary, enriched cage, traditional</p> <p>11 cage.</p> <p>12 Q And when you say to look at them from a</p> <p>13 holistic perspective, can you explain to me what</p> <p>14 that entails?</p> <p>15 A Animal welfare, food safety, production</p> <p>16 parameters, feed efficiency, et cetera,</p> <p>17 mortality. Included monitoring animal behavior,</p> <p>18 and I don't recall the rest. I'm not as intimate</p> <p>19 with the work in the last three years as I was</p> <p>20 earlier.</p> <p>21 Q Do you recall when that study was</p> <p>22 initiated by Cargill?</p>	<p style="text-align: right;">29</p> <p>1 Q Knowledge in what areas?</p> <p>2 A Understanding the -- understanding the</p> <p>3 comparison, the head-to-head comparison of the</p> <p>4 three systems. That information is lacking from</p> <p>5 a perspective of U.S. hens, the varieties, the</p> <p>6 strains that we have, and in today's hens, the</p> <p>7 varieties that we have today.</p> <p>8 Q And who --</p> <p>9 A Or at that time.</p> <p>10 Q Who else was involved in the study at</p> <p>11 the inception?</p> <p>12 A I don't recall the list, but there were</p> <p>13 a group of scientists from other universities,</p> <p>14 including USDA, and all of that is available on</p> <p>15 the website.</p> <p>16 Q And what is your role in that study</p> <p>17 today?</p> <p>18 A I don't have an official role now. I'm</p> <p>19 not actively involved in the study, since I --</p> <p>20 I'll just leave it at that.</p> <p>21 Q Were you actively involved in the study</p> <p>22 at its inception?</p>

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<p style="text-align: right;">30</p> <p>1       <b>A Yes.</b></p> <p>2       Q And when did you transition?</p> <p>3       <b>A When I became president of Cal Poly,</b></p> <p>4       <b>February 1 of 2011, my activity in that project</b></p> <p>5       <b>and many other projects related to animal science</b></p> <p>6       <b>or laying hens, my previous roles, diminished</b></p> <p>7       <b>significantly.</b></p> <p>8       Q Do you still have -- or do work related</p> <p>9       to animal science or animal welfare today?</p> <p>10       <b>A Limited.</b></p> <p>11       Q And did that change when you became</p> <p>12       president of --</p> <p>13       <b>A Yes.</b></p> <p>14       Q -- of Cal Poly?</p> <p>15       <b>A Yes.</b></p> <p>16       Q And why did it change at that time?</p> <p>17       <b>A I moved from a dean of a college of</b></p> <p>18       <b>agriculture and natural resources to president of</b></p> <p>19       <b>a comprehensive university that covers much, much</b></p> <p>20       <b>more than food and agriculture, although that is</b></p> <p>21       <b>a part of our university. So my responsibilities</b></p> <p>22       <b>are much broader.</b></p>	<p style="text-align: right;">32</p> <p>1       <b>A Reproductive physiology, endocrinology.</b></p> <p>2       <b>I also taught an undergraduate course entitled</b></p> <p>3       <b>Reproduction, Lactation, and Behavior.</b></p> <p>4       Q And prior to your teaching and</p> <p>5       research, and administrative responsibilities at</p> <p>6       NC State, am I correct that you were in school?</p> <p>7       <b>A Yes. From 1981, the fall, until 1986 I</b></p> <p>8       <b>worked on my master's and Ph.D. at North Carolina</b></p> <p>9       <b>State.</b></p> <p>10       Q I'd like to direct your attention on</p> <p>11       your CV to the third page where you have listed</p> <p>12       honors, awards, and professional recognition. Is</p> <p>13       this an accurate list of your honors, awards, and</p> <p>14       professional recognition at the time that this</p> <p>15       résumé was created?</p> <p>16       <b>A Yes.</b></p> <p>17       Q Is -- the fifth one down is McDonald's</p> <p>18       Welfare Advisory Panel where you state that you</p> <p>19       were a member from 2000 to the present; do you</p> <p>20       see that?</p> <p>21       <b>A Yes.</b></p> <p>22       Q Does that refresh your recollection as</p>
<p style="text-align: right;">31</p> <p>1       Q Prior to taking on the role of dean and</p> <p>2       professor at Michigan State University, what was</p> <p>3       your employment situation?</p> <p>4       <b>A I was head and professor of Animal</b></p> <p>5       <b>Sciences at Purdue University from 1997 until</b></p> <p>6       <b>2001.</b></p> <p>7       Q And did you have a specialty, an</p> <p>8       academic specialty, while you were at Purdue?</p> <p>9       <b>A Yes. It was the same. Reproductive</b></p> <p>10       <b>physiology and social responsibility in the food</b></p> <p>11       <b>system. Although, in 1997, I'm not sure we</b></p> <p>12       <b>called it that phrase.</b></p> <p>13       Q And prior to coming to Purdue in 1997</p> <p>14       what did you do?</p> <p>15       <b>A From July 1 of 1986 until June of 1997</b></p> <p>16       <b>I held various positions at North Carolina State</b></p> <p>17       <b>University.</b></p> <p>18       Q Were those teaching positions?</p> <p>19       <b>A I was involved in teaching and research</b></p> <p>20       <b>as well as administrative positions.</b></p> <p>21       Q What was your focus in teaching and</p> <p>22       research?</p>	<p style="text-align: right;">33</p> <p>1       to when you began service with McDonald's?</p> <p>2       <b>A That does.</b></p> <p>3       Q And are you still part of that advisory</p> <p>4       panel today?</p> <p>5       <b>A No.</b></p> <p>6       Q When did you stop being a member of</p> <p>7       that advisory panel?</p> <p>8       <b>A I don't recall exactly, but certainly</b></p> <p>9       <b>before I became president or at the time I became</b></p> <p>10       <b>president of Cal Poly.</b></p> <p>11       Q And three entries below that you have a</p> <p>12       listing for United Egg Producers Welfare Advisory</p> <p>13       Committee, Chair. Do you see that?</p> <p>14       <b>A Yes.</b></p> <p>15       Q What is the United Egg Producers</p> <p>16       Welfare Advisory Committee?</p> <p>17       <b>A It's a group of scientists that I was</b></p> <p>18       <b>asked to pull together, that I pulled together,</b></p> <p>19       <b>to look at the scientific basis for animal</b></p> <p>20       <b>welfare guidelines for the egg industry.</b></p> <p>21       Q And is that, what's listed here as the</p> <p>22       welfare advisory committee, sometimes referred to</p>

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<p style="text-align: right;">34</p> <p>1 as the UEP scientific advisory committee?</p> <p>2 <b>A Right. We typically would include</b></p> <p>3 <b>"scientific" in the title. I think that's the</b></p> <p>4 <b>title UEP has used.</b></p> <p>5 Q Okay. So it's the same --</p> <p>6 <b>A It's the same.</b></p> <p>7 Q -- I just want to make sure it's the</p> <p>8 same committee.</p> <p>9 And you say here you were invited to</p> <p>10 chair and select members of the committee. Is</p> <p>11 that accurate?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Who invited you to chair that</p> <p>14 committee?</p> <p>15 <b>A At that time, Al Pope as president of</b></p> <p>16 <b>UEP.</b></p> <p>17 Q When were you invited to chair and</p> <p>18 select members of the scientific advisory</p> <p>19 committee for UEP?</p> <p>20 <b>A Sometime early 1998, could have been</b></p> <p>21 <b>late 1997. I don't recall the exact date.</b></p> <p>22 Q Why did you agree to serve as chair of</p>	<p style="text-align: right;">36</p> <p>1 <b>in the process of building an animal welfare -- I</b></p> <p>2 <b>don't recall the exact title -- but we were</b></p> <p>3 <b>building a center, and we wanted to be and did</b></p> <p>4 <b>establish ourselves as a location, a go-to place</b></p> <p>5 <b>for animal welfare and behavior.</b></p> <p>6 Q At the time you were asked by UEP to</p> <p>7 chair this committee, was the egg industry the</p> <p>8 first industry that had taken on this role of</p> <p>9 developing animal welfare guidelines for their</p> <p>10 industry?</p> <p>11 MR. OLSON: Objection. Form.</p> <p>12 Q You can go ahead and answer.</p> <p>13 <b>A No.</b></p> <p>14 Q What other industries had embarked on</p> <p>15 that endeavor?</p> <p>16 <b>A I'm not aware of all others, but I do</b></p> <p>17 <b>know that the National Pork Producers had an</b></p> <p>18 <b>effort that was ongoing.</b></p> <p>19 Q Any others you can think of?</p> <p>20 <b>A There were other -- there were others,</b></p> <p>21 <b>but I can't recall the exact ones.</b></p> <p>22 Q How long did you serve as chair of</p>
<p style="text-align: right;">35</p> <p>1 this committee?</p> <p>2 <b>A It was something that I felt was</b></p> <p>3 <b>needed. It was something that was consistent</b></p> <p>4 <b>with the goals of the department of animal</b></p> <p>5 <b>sciences at Purdue University and something</b></p> <p>6 <b>consistent with my professional role and goals at</b></p> <p>7 <b>the time.</b></p> <p>8 Q Why did you feel it was needed?</p> <p>9 <b>A Animal welfare has not received -- at</b></p> <p>10 <b>that time had not received the attention from the</b></p> <p>11 <b>scientific perspective, nor had it received the</b></p> <p>12 <b>attention that it deserved by the different</b></p> <p>13 <b>animal commodity groups. So it was a very</b></p> <p>14 <b>interesting moment in time, and it was needed.</b></p> <p>15 Q And when you say it was consistent with</p> <p>16 the goals of the university at that time, what do</p> <p>17 you mean by that? Consistent in what way?</p> <p>18 <b>A When I arrived in Purdue University in</b></p> <p>19 <b>1997, the USDA ARS, Agriculture Research Service,</b></p> <p>20 <b>Livestock Behavior Unit, had been placed on the</b></p> <p>21 <b>campus, so that's a separate entity but they</b></p> <p>22 <b>collaborate with Purdue University, and we were</b></p>	<p style="text-align: right;">37</p> <p>1 UEP's scientific advisory committee?</p> <p>2 <b>A From 1998 until I became president of</b></p> <p>3 <b>Cal Poly.</b></p> <p>4 Q In 2011?</p> <p>5 <b>A Early 2011.</b></p> <p>6 Q And why did you step down as chair of</p> <p>7 the scientific advisory committee in 2011?</p> <p>8 <b>A I did not have time to do the job in</b></p> <p>9 <b>the way that I would want to. Time.</b></p> <p>10 Q And that was associated with your</p> <p>11 becoming president of Cal Poly?</p> <p>12 <b>A Absolutely. It's a 24/7 job.</b></p> <p>13 Q Did you remain on the committee in any</p> <p>14 capacity after you stepped down as chair?</p> <p>15 <b>A No.</b></p> <p>16 Q At any time during your service on the</p> <p>17 committee from 1998 through 2011 did you leave</p> <p>18 the committee?</p> <p>19 <b>A No.</b></p> <p>20 Q Do you still have a relationship with</p> <p>21 United Egg Producers today?</p> <p>22 <b>A Yes.</b></p>

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<p style="text-align: right;">38</p> <p>1 Q What is that relationship?</p> <p>2 A <b>Cordial but nothing -- nothing official</b></p> <p>3 <b>at this time.</b></p> <p>4 Q Do you do any work for --</p> <p>5 A <b>No.</b></p> <p>6 Q -- UEP today?</p> <p>7 A <b>No.</b></p> <p>8 Q And are you compensated in any way by</p> <p>9 UEP today?</p> <p>10 A <b>No.</b></p> <p>11 Q Do you do any work with the egg</p> <p>12 industry today?</p> <p>13 A <b>Not -- no. I don't have anything</b></p> <p>14 <b>ongoing.</b></p> <p>15 Q As chair of the UEP scientific advisory</p> <p>16 committee, what was your understanding of the</p> <p>17 committee's charter?</p> <p>18 A <b>To establish science-based animal</b></p> <p>19 <b>welfare guidelines first and foremost focused on</b></p> <p>20 <b>animal welfare.</b></p> <p>21 Q And that's for egg-laying hens?</p> <p>22 A <b>For egg-laying hens.</b></p>	<p style="text-align: right;">40</p> <p>1 A <b>Yes.</b></p> <p>2 Q Do you know whether another document</p> <p>3 that looks similar to this in that it has a title</p> <p>4 Recommendations for UEP Animal Welfare Guidelines</p> <p>5 and comprehensively, you know, runs through</p> <p>6 several areas was ever issued after this date by</p> <p>7 the scientific advisory committee?</p> <p>8 A <b>Oh, yes.</b></p> <p>9 Q Do you recall when?</p> <p>10 A <b>No, I don't recall when. But there</b></p> <p>11 <b>were different versions as this evolved.</b></p> <p>12 Q Do you recall how many versions?</p> <p>13 A <b>I do not. At least --</b></p> <p>14 Q I'd like to direct --</p> <p>15 A <b>At least three.</b></p> <p>16 Q Subsequent to this?</p> <p>17 A <b>Total. Total.</b></p> <p>18 Q Total. Okay. I'd like to direct your</p> <p>19 attention to the third page of the document that</p> <p>20 is entitled Members, UEP Scientific Advisory</p> <p>21 Committee on Animal Welfare.</p> <p>22 A <b>Yes.</b></p>
<p style="text-align: right;">39</p> <p>1 <b>(Deposition Exhibit 2 was marked for</b></p> <p>2 <b>identification.)</b></p> <p>3 MS. SUMNER: For the record I've marked</p> <p>4 as Armstrong 2 a confidential document bearing</p> <p>5 the Bates numbers UE0208684 through 703.</p> <p>6 Q Dr. Armstrong, if you'd just take a</p> <p>7 moment to familiarize yourself with this document</p> <p>8 and let me know when you've done so.</p> <p>9 Do you recognize this document,</p> <p>10 Dr. Armstrong?</p> <p>11 A <b>Yes.</b></p> <p>12 Q Can you tell me what it is?</p> <p>13 A <b>I believe this is the -- an early</b></p> <p>14 <b>version of the recommendations for UEP animal</b></p> <p>15 <b>welfare guidelines that was developed by the</b></p> <p>16 <b>committee, as you can see on page 3.</b></p> <p>17 Q And is this a draft document, or was</p> <p>18 this the final recommendations that were issued</p> <p>19 in 2000 by the scientific advisory committee?</p> <p>20 A <b>These -- these are the recommendations</b></p> <p>21 <b>as of this date.</b></p> <p>22 Q And did they evolve over time?</p>	<p style="text-align: right;">41</p> <p>1 Q Do you see that?</p> <p>2 Does this list reflect accurately the</p> <p>3 committee's members in 2000?</p> <p>4 A <b>Yes.</b></p> <p>5 Q And are these the original members of</p> <p>6 the scientific -- UEP Scientific Advisory</p> <p>7 Committee on Animal Welfare?</p> <p>8 A <b>Yes.</b></p> <p>9 Q And who selected these members for the</p> <p>10 committee?</p> <p>11 A <b>I did.</b></p> <p>12 Q And how did you select them?</p> <p>13 A <b>I consulted with Janice Swanson and Joy</b></p> <p>14 <b>Mench, and to a certain extent Scotti Hester, and</b></p> <p>15 <b>also I had conversations with Gene Gregory.</b></p> <p>16 Q And why was this group selected by you</p> <p>17 to serve on the committee?</p> <p>18 A <b>They were -- they were selected for</b></p> <p>19 <b>their individual contributions to the committee.</b></p> <p>20 <b>Each person has a different professional</b></p> <p>21 <b>background, a different professional set of</b></p> <p>22 <b>accomplishments, and these were the best at the</b></p>

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<p style="text-align: right;">42</p> <p>1 time that -- I called it our dream team, in fact, 2 at the time -- and everyone that we wanted said 3 yes.</p> <p>4 And when I say we, really Janice 5 Swanson and Joy Mench were close -- were 6 advisers. And I don't recall how much it was Joy 7 or Janice, but they're very well known in the 8 animal behavior area.</p> <p>9 Q So you consulted with them in coming up 10 with the committee's composition?</p> <p>11 A Correct.</p> <p>12 Q Did the composition of the committee 13 evolve over time?</p> <p>14 A It did.</p> <p>15 Q What was the role of the USDA, 16 Dr. Larry Stanker, on this committee?</p> <p>17 MR. OLSON: Objection to form.</p> <p>18 A His --</p> <p>19 THE WITNESS: Go ahead and answer?</p> <p>20 MR. KEALEY: Yes.</p> <p>21 A Larry Stanker's role, as I recall, he 22 was not on the committee for very long. There</p>	<p style="text-align: right;">44</p> <p>1 they went along with us and answered questions. 2 And then they were a resource as we -- as our 3 meetings progressed, if we wanted to understand 4 something more from a practical perspective, 5 these two individuals were very helpful, as was 6 Don Bell and Bill Chase, as they had more 7 practical experience in the day-to-day operation 8 of laying hens and egg production than the rest 9 of the members.</p> <p>10 Q Why was that important to have -- or 11 why did you place individuals on the committee 12 who had that background?</p> <p>13 MR. OLSON: Objection. Form.</p> <p>14 A Because animal welfare guidelines that 15 are not practical nor feasible do no good to an 16 animal. The animal welfare is not impacted if 17 guidelines are not adopted.</p> <p>18 Q Were the committee members compensated 19 for their work on the scientific advisory 20 committee?</p> <p>21 A Yes. They received honorariums on an 22 individual basis.</p>
<p style="text-align: right;">43</p> <p>1 was multiple issues totally unrelated to the 2 committee, but it had to do with food safety, as 3 I recall.</p> <p>4 Q Do you recall whether he was replaced 5 by another USDA person?</p> <p>6 A I don't -- I don't recall. I would 7 have to look at the list. But he was replaced.</p> <p>8 Q And then under the members there are 9 two individuals listed under the word "support"; 10 do you see that?</p> <p>11 A Yes.</p> <p>12 Q Okay. And who are they?</p> <p>13 A Barrie Wilcox was the chair of the 14 producer animal welfare committee, a UEP standing 15 or ad hoc -- I'm not sure -- committee. And then 16 Gene Gregory was vice president at the time, and 17 they were there for support. They were 18 ex-officio nonvoting members of the committee.</p> <p>19 Q What kind of support did they provide 20 to the committee?</p> <p>21 A Well, our first meeting was a tour of 22 egg facilities in Iowa. So they facilitated,</p>	<p style="text-align: right;">45</p> <p>1 Q What's an honorarium?</p> <p>2 A An honorarium in academic terms is, 3 someone gives a presentation or they visit a 4 university, it's not a typical consulting 5 arrangement, but it's a five-, six-, 6 seven-hundred, eight-hundred-dollar amount that's 7 paid to thank them and recognize the effort.</p> <p>8 Q Do you recall on how many occasions 9 scientific advisory committee members received 10 honoraria for their work on the scientific 11 advisory committee?</p> <p>12 MR. OLSON: Objection. Form.</p> <p>13 A I do not recall. Not more than 14 annually, but I don't think it occurred every 15 year.</p> <p>16 Q And do you recall the amount that was 17 paid as an honorarium in any of those years?</p> <p>18 MR. OLSON: Objection. Form.</p> <p>19 A I don't recall the exact amount, but I 20 never recall it being more than a thousand 21 dollars per committee member.</p> <p>22 Q Did you receive honoraria from UEP?</p>

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<p style="text-align: right;">46</p> <p>1       <b>A Yes.</b></p> <p>2       Q And did those payments influence your</p> <p>3 work on the scientific advisory committee?</p> <p>4       <b>A Absolutely not.</b></p> <p>5       Q Do you recall when the honoraria were</p> <p>6 paid? What years?</p> <p>7       <b>A I do not.</b></p> <p>8       Q Do you recall whether any were paid</p> <p>9 prior to the publication of these guidelines in</p> <p>10 September 2000 -- or these recommendations,</p> <p>11 excuse me -- in September of 2000?</p> <p>12       <b>A I do not recall. I do not recall. I</b></p> <p>13 <b>don't think so, but I cannot say for certain.</b></p> <p>14       Q Okay. Did you -- aside from those</p> <p>15 honoraria that we just talked about, did you ever</p> <p>16 receive any other compensation from United Egg</p> <p>17 Producers?</p> <p>18       <b>A Yes, I did, as I had a separate role</b></p> <p>19 <b>advising UEP on broader aspects of</b></p> <p>20 <b>sustainability. So I had -- I received a</b></p> <p>21 <b>consulting fee on several occasions.</b></p> <p>22       Q And was that consulting fee for your</p>	<p style="text-align: right;">48</p> <p>1       Q Can you tell me what it is, please?</p> <p>2       <b>A It's an invoice I sent to Gene Gregory</b></p> <p>3 <b>for consulting in 2004.</b></p> <p>4       Q And is this an invoice for the</p> <p>5 consulting services -- type services that you</p> <p>6 were just describing?</p> <p>7       <b>A Yes.</b></p> <p>8       MR. OLSON: Objection. Form.</p> <p>9       <b>A Yes. Anytime that I was involved in</b></p> <p>10 <b>consulting, there was an invoice associated with</b></p> <p>11 <b>it.</b></p> <p>12       Q What was the line item No. 1 here on</p> <p>13 the description: Consulting, Interview with CBS</p> <p>14 Eye on America?</p> <p>15       <b>A It involved traveling to a Pennsylvania</b></p> <p>16 <b>egg farm, spending the entire day with the</b></p> <p>17 <b>producers and personnel of CBS Eye on America</b></p> <p>18 <b>answering questions about the egg industry.</b></p> <p>19       Q Do you recall the subject matter of the</p> <p>20 CBS Eye on America piece?</p> <p>21       <b>A Laying hen animal welfare.</b></p> <p>22       Q And was that work done in connection</p>
<p style="text-align: right;">47</p> <p>1 work on the scientific advisory committee as</p> <p>2 chair?</p> <p>3       <b>A No.</b></p> <p>4       Q Describe for me, please, the consulting</p> <p>5 work for which you did receive a fee from UEP.</p> <p>6       <b>A I -- one example is I traveled to an</b></p> <p>7 <b>egg farm, toured with some lay individuals,</b></p> <p>8 <b>members of the public, asked questions, developed</b></p> <p>9 <b>videos, responded to other inquiries, worked to</b></p> <p>10 <b>look at the broader aspects of the egg industry,</b></p> <p>11 <b>and also looked at sort of a crystal ball</b></p> <p>12 <b>perspective, where might the industry be going</b></p> <p>13 <b>with regard to animal welfare, other aspects of</b></p> <p>14 <b>social responsibility in the food system.</b></p> <p>15       <b>(Deposition Exhibit 3 was marked for</b></p> <p>16 <b>identification.)</b></p> <p>17       MS. SUMNER: For the record, I've</p> <p>18 marked as Armstrong 3 a confidential document</p> <p>19 bearing the Bates No. UE0813143.</p> <p>20       Q Dr. Armstrong, do you recognize this</p> <p>21 document?</p> <p>22       <b>A Yes.</b></p>	<p style="text-align: right;">49</p> <p>1 with your work on the scientific advisory</p> <p>2 committee?</p> <p>3       <b>A It was correlated with it, but it was</b></p> <p>4 <b>a -- this was a separate endeavor. It wasn't a</b></p> <p>5 <b>committee activity.</b></p> <p>6       Q And the next line item, Consulting, UEP</p> <p>7 Producer Committee on Hen Welfare, can you</p> <p>8 describe that work for me, please?</p> <p>9       <b>A Yeah. That -- and I'm not sure how</b></p> <p>10 <b>much of that -- I don't recall whether that</b></p> <p>11 <b>included -- some of that included travel</b></p> <p>12 <b>reimbursement. I'm not sure; it may or may not</b></p> <p>13 <b>have. But I worked with the UEP producer</b></p> <p>14 <b>committee and I attended the meetings.</b></p> <p>15       Q And why did you -- what was your role</p> <p>16 in working with the producer committee and</p> <p>17 attending their meetings?</p> <p>18       <b>A To advise them, to serve as a liaison</b></p> <p>19 <b>with the scientific advisory committee.</b></p> <p>20       Q And the item No. 3, 2004 Communication,</p> <p>21 Advise, and Consulting from Michigan. Can you</p> <p>22 describe that work for me, please?</p>



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<p style="text-align: right;">50</p> <p>1       <b>A That's basically a retainer, to be</b>  2       <b>available to answer questions about topics</b>  3       <b>related to sustainability of the egg industry.</b>  4       Q And was this invoice submitted by you  5       to UEP?  6       <b>A Yes.</b>  7       Q And was it -- was this amount paid by  8       UEP?  9       <b>A Yes.</b>  10      Q And do you recall to whom the payment  11      was made?  12      <b>A Either to me directly or JDA</b>  13      <b>Consulting. I'm not -- I can't recall.</b>  14      Q And what is JDA Consulting?  15      <b>A It's just what I formed as a -- as a --</b>  16      <b>my consulting business.</b>  17      <b>(Deposition Exhibit 5 was marked for</b>  18      <b>identification.)</b>  19      MS. SUMNER: For the record, I've  20      marked as Armstrong 5 a confidential document  21      bearing the Bates No. UE066.  22      MR. OLSON: Did we skip 4, Robin, on</p>	<p style="text-align: right;">52</p> <p>1       checks from UEP in this year?  2       <b>A Yes.</b>  3       Q And do you recall to whom the checks  4       were made out?  5       <b>A Jeff Armstrong or my consulting</b>  6       <b>company.</b>  7       <b>(Deposition Exhibit 4 was marked for</b>  8       <b>identification.)</b>  9       MS. SUMNER: We marked as Armstrong 4 a  10      confidential document bearing the Bates No.  11      UE0666613.  12      Q Dr. Armstrong, do you recognize this  13      document?  14      <b>A Yes.</b>  15      Q Can you tell me what it is, please?  16      <b>A This is the cover memo for a check, a</b>  17      <b>donation, from UEP to the College of Agriculture</b>  18      <b>and Natural Resources. This was a gift from UEP.</b>  19      <b>This is a common practice for industry,</b>  20      <b>corporations to contribute to universities.</b>  21      Q And was this compensation for your work  22      on the scientific advisory committee?</p>
<p style="text-align: right;">51</p> <p>1       purpose?  2       MS. SUMNER: Oh. Sorry. Yes. That  3       should be marked as Armstrong 4.  4       MR. OLSON: We can do 4 next.  5       Whatever.  6       MS. SUMNER: That's fine. We'll just  7       keep this as 5.  8       UE0662322.  9       Q Dr. Armstrong, do you recognize this  10      document?  11      <b>A Yes.</b>  12      Q Can you tell me what it is?  13      <b>A It's apparently the cover letter for a</b>  14      <b>check I received from Gene Gregory for an invoice</b>  15      <b>I submitted in 2005.</b>  16      Q And what was that invoice for?  17      <b>A Reimbursement of travel, and a retainer</b>  18      <b>for consulting and sustainability for 2005.</b>  19      Q And is that consulting work similar to  20      the consulting work that you've been describing?  21      <b>A Yes.</b>  22      Q And did you, indeed, receive these</p>	<p style="text-align: right;">53</p> <p>1       <b>A No, I requested the discretionary</b>  2       <b>support from Gene to Michigan State University.</b>  3       <b>So yes, it was indirectly related. But it was</b>  4       <b>for use -- discretionary use as dean.</b>  5       Q And did this payment influence in any  6       way the recommendations that you made or endorsed  7       as chair of the scientific advisory committee?  8       <b>A Oh, absolutely not. The first set of</b>  9       <b>recommendations came out before any of this --</b>  10      <b>any of this started. And it's typical for</b>  11      <b>university professors to be involved in</b>  12      <b>consulting. It's also typical for scientific</b>  13      <b>advisory committee members to be involved and</b>  14      <b>have honoraria.</b>  15      <b>(Deposition Exhibit 6 was marked for</b>  16      <b>identification.)</b>  17      MS. SUMNER: I've marked as Exhibit 6 a  18      confidential document bearing the Bates numbers  19      UE0800562 through 63.  20      Q Dr. Armstrong, do you recognize this  21      document?  22      <b>A Yes.</b></p>

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15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 Q And can you tell me what it is, please?</p> <p>2 A It's an invoice for -- in effect a</p> <p>3 retainer for my advice and consulting dated</p> <p>4 March 12th, 2007.</p> <p>5 Q And is this the same consulting work --</p> <p>6 A Yes.</p> <p>7 Q -- that we've been discussing?</p> <p>8 A Yes.</p> <p>9 MR. OLSON: Objection to form.</p> <p>10 Q And is this an invoice -- this is a</p> <p>11 retainer?</p> <p>12 A Yes.</p> <p>13 Q Was this invoice submitted to UEP?</p> <p>14 A Yes.</p> <p>15 Q And was the invoice paid?</p> <p>16 A Yes.</p> <p>17 Q Do you recall to whom UEP made the</p> <p>18 payment?</p> <p>19 A To -- to me.</p> <p>20 Q Other than the invoices that we have</p> <p>21 just walked through, do you recall whether there</p> <p>22 were other invoices for consulting services that</p>	<p style="text-align: right;">56</p> <p>1 Iowa. And we were -- "appalled" might have been</p> <p>2 the word -- to see exactly the conditions. And</p> <p>3 that really set the stage for us looking at what</p> <p>4 was going -- what was going on in the industry.</p> <p>5 The first committee meeting, I believe,</p> <p>6 was held in Arizona. We spent quite a bit of</p> <p>7 time discussing different types of egg</p> <p>8 production. We discussed the pros and cons of</p> <p>9 all of those different types of egg production.</p> <p>10 By types I mean free range, aviary, we called it</p> <p>11 modified cage at the time it's really referring</p> <p>12 to enriched cage or cage production.</p> <p>13 That discussion was led by Joy Mench,</p> <p>14 UC-Davis, one of the world's experts in this</p> <p>15 area. And at that committee at that time we</p> <p>16 decided to focus our efforts first and foremost</p> <p>17 on caged production, because at that time in</p> <p>18 1998, 98 percent of the birds were housed in</p> <p>19 cages.</p> <p>20 That was preceded by a meeting in late</p> <p>21 1997-98 before I was asked to form the committee</p> <p>22 in which we met with Al Pope, Gene Gregory, I</p>
<p style="text-align: right;">55</p> <p>1 were submitted by you to UEP?</p> <p>2 A I'm not -- I don't recall whether</p> <p>3 that's all of them. It's very close because it</p> <p>4 wasn't annually, and it didn't continue after a</p> <p>5 certain period of time.</p> <p>6 Q Do you recall when was the last invoice</p> <p>7 that you submitted to UEP --</p> <p>8 A I do not.</p> <p>9 Q -- for consulting work.</p> <p>10 Did you ever submit an invoice to UEP</p> <p>11 for your work on the scientific advisory</p> <p>12 committee?</p> <p>13 A No. No.</p> <p>14 Q Going back to what was marked as</p> <p>15 Exhibit -- Armstrong Exhibit 2, the</p> <p>16 September 2000 Recommendations for UEP Animal</p> <p>17 Welfare Guidelines submitted by the Scientific</p> <p>18 Advisory Committee on Animal Welfare, can you</p> <p>19 describe for me, Dr. Armstrong, the committee's</p> <p>20 process in coming up with these recommendations?</p> <p>21 A So the first time the committee got</p> <p>22 together we went on a tour of egg facilities in</p>	<p style="text-align: right;">57</p> <p>1 don't recall who else was there, and we looked at</p> <p>2 their guidelines at the time. And we said these</p> <p>3 are not science-based guidelines, they are simply</p> <p>4 a collection of your best practices. And at the</p> <p>5 time they were being pushed very hard by one or</p> <p>6 two animal rights activist groups. And we</p> <p>7 basically said your guidelines are not</p> <p>8 science-based. They are -- they are just simply</p> <p>9 what you're doing.</p> <p>10 One, two, or three months after that I</p> <p>11 received a call and said, "Would you put together</p> <p>12 a committee?" And we -- and that was what I</p> <p>13 recommended on how to do it.</p> <p>14 What I recommended not to do is what</p> <p>15 I'd observed in other areas where you have a</p> <p>16 group of scientists in the room and a group of</p> <p>17 producers in the room, and you're always arguing</p> <p>18 about the science among people that don't</p> <p>19 understand the science.</p> <p>20 So in our process, it was very clear</p> <p>21 what I wanted to do up front is establish a group</p> <p>22 of scientists that had knowledge, and then we</p>



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<p style="text-align: right;">58</p> <p>1 would provide recommendations. It would be up to  2 the producers whether they would implement those  3 recommendations or not. Because that's -- that  4 wasn't our role to say "You must do this  5 tomorrow, you must do this next year."  6 So in that first meeting after the tour  7 we also established -- and I was very clear in  8 establishing -- we're going to determine the  9 minimum guidelines for humane production of eggs,  10 housing hens. And we used very conservative  11 measures of animal welfare. And that's where we  12 started, and then those original recommendations  13 were developed and published in 2000, so they  14 were -- we started talking about them well before  15 that. And the industry -- it was very difficult  16 for the industry in the beginning to think about  17 giving birds more space. Some members were very  18 angry and did not understand why that should  19 happen.  20 Q Did you have an understanding as to why  21 industry members were so angry about the idea  22 that birds should be given more space?</p>	<p style="text-align: right;">60</p> <p>1 it was more focused on the corporate -- the  2 welfare of the building versus the welfare of the  3 individual animal.  4 So the birds were typically housed at  5 48 square inches. Producers knew that if they  6 gave the birds more space, it would cost more  7 money. As birds would waste more food, they  8 would move around more, and the total house  9 efficiency would change.  10 So that's why they -- they didn't --  11 that's one of the reasons why they didn't want to  12 give birds more space. Secondly -- and I think  13 that was one of the main reasons.  14 Secondly, it was related to, well, the  15 birds are producing. They're fine.  16 Third, human nature, people don't want  17 to change.  18 Fourth, animal agriculture as a whole,  19 they don't like to be told what to do by anybody,  20 especially government regulations, retail, or a  21 group of academics.  22 Q You'd mentioned several times this</p>
<p style="text-align: right;">59</p> <p>1 A Some members. Some members.  2 Because -- let me put it this way.  3 (A discussion was held off the record.)  4 MR. OLSON: Should we take a break?  5 MS. SUMNER: Yeah. Why don't we take a  6 quick break.  7 THE VIDEOGRAPHER: We're going off the  8 record. The time is 9:26 a.m.  9 (A recess was taken.)  10 THE VIDEOGRAPHER: This is the  11 beginning of Tape 2. The time is 9:37 a.m., and  12 we are back on the record.  13 Q Dr. Armstrong, before we went off the  14 record I had asked you the question as to whether  15 you had an understanding as to why some industry  16 members were so angry about the idea that birds  17 should be given more space.  18 A Yes. What had happened over time is  19 the industry had adjusted the cage system to the  20 maximum efficiency on a per-house basis. So what  21 that means is the amount of money in feed and  22 labor and in the amount of eggs coming out. So</p>	<p style="text-align: right;">61</p> <p>1 morning about science-based guidelines. Did you  2 believe that it was important that animal welfare  3 guidelines be science-based?  4 MR. SCHIRMER: Object to form.  5 A Absolutely. Because if you look at  6 perception, and you look at what some people  7 would perceive as good animal welfare, then all  8 of our birds would be outside in open fields,  9 referred to as free-range. If you look at that  10 from an animal welfare perspective, that's not  11 the best from a science-based perspective. There  12 are other reasons that people may want to have  13 their birds raised in that manner.  14 For example, if you look at a confined  15 system of aviaries versus cages. Which -- in  16 which system to more birds die? In the aviary.  17 In which system do birds have more broken bones?  18 In the aviary. But many people would view that  19 as a much higher level of animal welfare because  20 the bird can perform many more behaviors.  21 So it gets -- it gets complicated, but  22 it's important, then, to have measures of animal</p>

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 welfare, and have science-based so that you have</p> <p>2 a baseline, a minimum level -- a minimum level --</p> <p>3 of welfare. Then the market can look at, well,</p> <p>4 should there be a higher level, should there be</p> <p>5 the minimum.</p> <p>6 We were looking at what is the minimum</p> <p>7 animal welfare. And as a result of our</p> <p>8 guidelines, what we have said -- and I've said on</p> <p>9 the record and the committee would say -- that</p> <p>10 individuals that are not using the guidelines and</p> <p>11 they're housing birds at 48 square inches or less</p> <p>12 than 67 square inches, that type of production is</p> <p>13 not humane. It's inhumane. And that's based on</p> <p>14 science.</p> <p>15 Q Dr. Armstrong, whose recommendations</p> <p>16 are the recommendations that are embodied in that</p> <p>17 document that's been marked as Exhibit No. 2?</p> <p>18 A These are the recommendations of the</p> <p>19 individuals, the one, two, three, four, five,</p> <p>20 six, seven, eight, nine individuals, that make up</p> <p>21 this UEP Scientific Advisory Committee on Animal</p> <p>22 Welfare.</p>	<p style="text-align: right;">64</p> <p>1 develop science-based guidelines.</p> <p>2 Secondly, we view the industry's</p> <p>3 response to our guidelines at the macro level as</p> <p>4 being very progressive and positive. Every one</p> <p>5 of the major points that we put forward were</p> <p>6 accepted and eventually implemented.</p> <p>7 That was -- that is viewed as a very</p> <p>8 significant professional accomplishment by any of</p> <p>9 the committee members. You could ask them, and</p> <p>10 they would tell you that.</p> <p>11 Q Were there any restrictions placed on</p> <p>12 the scientific advisory committee's</p> <p>13 recommendations?</p> <p>14 A Absolutely not. In fact, I told --</p> <p>15 I've told people, and I've said in presentations,</p> <p>16 that it wasn't a given that this group of people</p> <p>17 would say that cages were humane at the</p> <p>18 beginning. It wasn't a -- it wasn't -- there</p> <p>19 wasn't a litmus test: "Will you join this</p> <p>20 committee, and will you support cages?"</p> <p>21 That was not asked. That's why those</p> <p>22 first couple of meetings were so important to</p>
<p style="text-align: right;">63</p> <p>1 Q And those nine individuals are the</p> <p>2 individuals who are listed as the members?</p> <p>3 MR. OLSON: Object to form.</p> <p>4 A The membership as of 2000, that's</p> <p>5 correct. These people came up with the</p> <p>6 recommendations.</p> <p>7 Q Who drafted these recommendations?</p> <p>8 A The same people. I was the</p> <p>9 editor-in-chief.</p> <p>10 Q And was there a consensus among the</p> <p>11 committee members with respect to these</p> <p>12 recommendations?</p> <p>13 A Absolutely.</p> <p>14 MR. SCHIRMER: Object to form.</p> <p>15 A Absolutely there was a consensus.</p> <p>16 There was a lot of discussion, a lot of debate,</p> <p>17 push and pull, but there was a consensus at each</p> <p>18 and every point.</p> <p>19 The other thing I can tell you from the</p> <p>20 long view of this, two points. The scientific</p> <p>21 advisory committee believes this is a model by</p> <p>22 which the rest of animal agriculture can use to</p>	<p style="text-align: right;">65</p> <p>1 establish the fundamental aspects of where we</p> <p>2 were going and from where we were moving.</p> <p>3 Q Was the scientific advisory committee</p> <p>4 disbanded or dissolved after these</p> <p>5 recommendations were published in September of</p> <p>6 2000?</p> <p>7 A No. We recognized from day one that</p> <p>8 science is dynamic, biology is dynamic, the birds</p> <p>9 change over time as they're being selected, and</p> <p>10 guidelines change. This committee continues.</p> <p>11 The chair now is Patricia Hester. Also known as</p> <p>12 Scotti Hester.</p> <p>13 Q And what was the committee's role after</p> <p>14 these recommendations were published in September</p> <p>15 of 2000?</p> <p>16 A Several --</p> <p>17 MR. SCHIRMER: Object to form.</p> <p>18 A -- roles. One to continue to refine</p> <p>19 because some of the recommendations were based on</p> <p>20 the best knowledge we had at the time. Some</p> <p>21 areas needed additional investigation. Some</p> <p>22 areas needed, you know, additional refinement.</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 We also looked at different types of</p> <p>2 production. We started with cages, and I think</p> <p>3 you'll see in subsequent guidelines, we added</p> <p>4 non-cage and cage. And we basically said here</p> <p>5 are the guidelines that affect any bird, here are</p> <p>6 the guidelines that affect non-cage, here are the</p> <p>7 guidelines that affect cage.</p> <p>8 So it's greatly -- it's evolving. And</p> <p>9 the committee is very active and should continue</p> <p>10 on and on.</p> <p>11 Q You just mentioned additional areas</p> <p>12 that at this time -- the time of publication in</p> <p>13 September 2000 -- needed additional investigation</p> <p>14 or refinement.</p> <p>15 A Yes.</p> <p>16 Q Do you have a recollection as to what</p> <p>17 those areas were?</p> <p>18 A Yes. Yes. Major -- one of the major</p> <p>19 ones was to continue to work with the producers</p> <p>20 to help them to understand that 25 parts per</p> <p>21 million ammonia is the level that the science</p> <p>22 supported. There were producers that were very</p>	<p style="text-align: right;">68</p> <p>1 That was stopped, and it was traditionally feed</p> <p>2 withdrawal. Feed removal for up to 14 days</p> <p>3 causes a suppression of the immune system. That</p> <p>4 is a negative impact on animal welfare, the</p> <p>5 welfare of the hen.</p> <p>6 The industry was not prepared to stop</p> <p>7 molting or using non-feed withdrawal method at</p> <p>8 that time. We needed to understand how could we</p> <p>9 induce a molt without starving the birds.</p> <p>10 There were also some fine tunings that</p> <p>11 were needed in the areas of beak trimming,</p> <p>12 understanding the way you might do it, helping</p> <p>13 the producers understand that, yes, under ten</p> <p>14 days is when you need to do it to avoid chronic</p> <p>15 pain.</p> <p>16 And then feeder space was another</p> <p>17 example.</p> <p>18 Q We're going to talk about each of those</p> <p>19 in a little bit but --</p> <p>20 A And I may not have hit them all, but</p> <p>21 that's --</p> <p>22 Q I want to --</p>
<p style="text-align: right;">67</p> <p>1 upset about that. They were upset on the fact</p> <p>2 that we didn't -- they didn't think we could ever</p> <p>3 get below 50 let alone 25 parts per million.</p> <p>4 So that was not really refining the</p> <p>5 science and doing more studies, it was continuing</p> <p>6 to help educate the producers, and that was part</p> <p>7 of my role as chair, that was part of the</p> <p>8 committee's role.</p> <p>9 Second would be molting. Molting was</p> <p>10 recognized at our very first committee meeting as</p> <p>11 being -- having positive and negative aspects.</p> <p>12 Just a brief summary on molting. It is</p> <p>13 the process in which a bird loses a significant</p> <p>14 amount of weight and the bird is rejuvenated.</p> <p>15 That's positive. The bird can then go into</p> <p>16 another cycle of laying eggs, and you don't need</p> <p>17 another whole batch of hens, you can use them.</p> <p>18 So you get twice or three times the production</p> <p>19 from one bird. From a corporate welfare</p> <p>20 perspective, that's positive; right?</p> <p>21 The negative aspect of molting is how</p> <p>22 it was induced. It used to be water withdrawal.</p>	<p style="text-align: right;">69</p> <p>1 MS. SUMNER: Can I have No. 7.</p> <p>2 (Deposition Exhibit 7 was marked for</p> <p>3 identification.)</p> <p>4 Q Dr. Armstrong, if you can just take a</p> <p>5 moment and review the document that's been marked</p> <p>6 as Armstrong 7. This is a confidential document</p> <p>7 that bears the Bates Nos. UE0206284 through 285.</p> <p>8 A Yes, I'm familiar with the document.</p> <p>9 Q Can you tell me what this document is?</p> <p>10 A This was an opinion piece that I</p> <p>11 penned, shared, received feedback from the</p> <p>12 committee, but I wanted to get a point across to</p> <p>13 as many people that would read it. In</p> <p>14 particular, I wanted to influence the producers,</p> <p>15 and I hoped the activist groups would read it as</p> <p>16 well. And then there are other secondary points</p> <p>17 of why I did it.</p> <p>18 Q So this is an article that you</p> <p>19 authored?</p> <p>20 A I did write this.</p> <p>21 Q And what was the point that you were</p> <p>22 trying to make with this article?</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1       <b>A</b>   It's really in the title. Proactivity,  2       development of industry guidelines shows concern  3       for the future, not a caving to activists. I  4       learned when I was in North Carolina that, in  5       that case, the pork producers had a very dim view  6       of regulations, and they referred to it as a  7       slippery slope. If you give them an inch,  8       they'll take a mile. And we wanted the industry  9       to understand, we wanted the activists to  10      understand, that we've got to be proactive.  11      We've got to use science-based guidelines and  12      make changes. Don't wait until they're forced  13      upon you. That was the major point.</p> <p>14      Q   And at the time you wrote this article,  15      were the -- did you believe that the article was  16      accurate?</p> <p>17      <b>A</b>   Absolutely.</p> <p>18      MR. SCHIRMER: Object to form.</p> <p>19      Q   I'd like to just ask you a couple of  20      questions about some of the specific statements  21      in this article. So if you would just please  22      turn with me to the second column on the first</p>	<p style="text-align: right;">72</p> <p>1       Q   Can you explain to me what you meant  2       by, "While the primary objective of the committee  3       was hen welfare, we also looked at economics,  4       productivity, product safety and social  5       concerns"?</p> <p>6       <b>A</b>   So very simply, we wanted to look at  7       very conservative measures of animal welfare,  8       measures that were irrefutable. Because that's  9       one of the issues with animal welfare, how do you  10      measure whether an animal is in a good state or a  11      bad state.</p> <p>12      Two fundamental basic measures are  13      mortality, how many birds die, and per-hen  14      productivity. Better the welfare, the more eggs  15      they produce. Those were our conservative  16      measures, and our goal was to establish the  17      minimum humane levels for cage production.</p> <p>18      We were not going to ignore other  19      factors such as the productivity from a house  20      perspective. Feed efficiency, which is not  21      really animal welfare, but it is a cost. Does a  22      bird waste feed? Do they use the feed more</p>
<p style="text-align: right;">71</p> <p>1       page.</p> <p>2       <b>A</b>   Yes.</p> <p>3       Q   It's the third full paragraph down  4       which starts "In 1999."</p> <p>5       <b>A</b>   Yes.</p> <p>6       Q   Do you see that?</p> <p>7       <b>A</b>   Yes.</p> <p>8       Q   Dr. Armstrong, could you just read that  9       paragraph into the record, please.</p> <p>10      <b>A</b>   "In 1999, UEP asked that a committee of  11      specialists in animal behavior, poultry  12      production, and food safety, along with  13      veterinarians and other animal scientists, be  14      established. An egg producer and a UEP staff  15      member served as ex-officio, nonvoting members  16      (advisers). While the primary objective of the  17      committee was hen welfare, we also looked at  18      economics, productivity, product safety and  19      social concerns."</p> <p>20      Q   Is that an accurate statement,  21      Dr. Armstrong?</p> <p>22      <b>A</b>   Yes.</p>	<p style="text-align: right;">73</p> <p>1       effectively, efficiently? Product safety -- you  2       can't do something that causes the product to be  3       unsafe at the expense of welfare. And then  4       social concerns. Perception is there. Some  5       people will never accept a cage, regardless of  6       science.</p> <p>7       Q   Specifically when you said "we also  8       looked at economics," what were you referring to  9       there with your use of the term "economics"?</p> <p>10      <b>A</b>   Totally within the confines of the  11      production system. It really -- it really is the  12      cost -- you know, the parameters. And I think a  13      better way to phrase that would have been is it  14      practical, is it feasible. That's really what we  15      were getting at.</p> <p>16      Q   And why did the committee undertake  17      that consideration, was it practical, was it  18      feasible?</p> <p>19      <b>A</b>   Because guidelines that are so  20      impractical, they don't have any impact on animal  21      welfare. 98 -- as an example, 98 percent of the  22      birds are in cages. We chose as a committee on</p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 our own accord to look at can cages be humane. 2 We said yes, under these conditions. 3 But to say to the industry that, for 4 example, molting would be abolished tomorrow was 5 totally impractical. Not doable by the industry. 6 And that involved -- part of that involved the 7 system and the cost that was -- how they had 8 built their system. 9 So we said use these guidelines to make 10 it work for now. And -- but you got to change 11 it. And we didn't say when. We were very 12 careful. And we said from the very beginning 13 that it's not our role to say when. 25 parts per 14 million ammonia, get there as fast as you can, 15 but it's not our role as a group of scientists to 16 tell the industry when they should have 25 parts 17 per million. As soon as you can. That's as far 18 as we would go. 19 Q If it had been practical to implement 20 all of the recommendations immediately, would the 21 committee have been in favor of that? 22 A Yes. Absolutely. Because again, the</p>	<p style="text-align: right;">76</p> <p>1 not changed and represented significant changes 2 in the husbandry of laying hens. There was no 3 question in the mind of the committee or the UEP 4 members that implementations of these guidelines 5 would increase the cost of production. Yet, the 6 guidelines prevailed. These recommendations 7 became the basis of a voluntary welfare program 8 under the auspices of UEP. It also became the 9 basis for McDonald's requirements for its egg 10 suppliers." 11 Q And are those sentences in that 12 paragraph accurate statements, Dr. Armstrong? 13 A Absolutely. 14 Q I'd like you to turn now to page 2 of 15 this editorial. And at the very bottom of the 16 first column there on page 2 it starts, "It is 17 very important to base guidelines on science but 18 not be oblivious to the social" -- 19 A Mm-hmm. 20 Q -- "economic" -- do you see that? 21 A Yes. 22 Q Could you read into the record just</p>
<p style="text-align: right;">75</p> <p>1 committee was concerned first and foremost about 2 the welfare of the laying hen. So if we could 3 have waived -- we would have said let's 4 immediately change the genetics of the birds such 5 that they're calm and they don't even peck each 6 other or kill each other, and you don't need to 7 beak trim. Let's immediately put them at 67 8 square inches and give them more space. Let's 9 immediately stop molting altogether, or use a 10 method that does not involve starvation. Those 11 are just examples. We would have said 12 immediately. Absolutely. But it's got to be 13 practical. 14 Q I'd like to direct your attention now 15 to the third column on this page, the second full 16 paragraph down that starts, "The UEP board 17 unanimously." 18 A Yes. 19 Q Do you see that? Could you read that 20 paragraph into the record, please. 21 A "The UEP board unanimously accepted the 22 guidelines for laying hens. The guidelines were</p>	<p style="text-align: right;">77</p> <p>1 from that sentence through the end of that 2 paragraph, please. 3 A "It is very important to base 4 guidelines on science but not be oblivious of the 5 social, economic, ecological and environmental 6 issues. Producers and agricultural leaders need 7 to be at the table. While I do not believe 8 producers should be involved in establishing the 9 science behind the guidelines, I equally believe 10 that scientists should not be telling producers 11 when to implement these guidelines." 12 Q Dr. Armstrong, is that an accurate 13 statement of your beliefs? 14 A That was not only an accurate statement 15 of my beliefs but that would be the full belief 16 of the committee at that time. 17 Q And what was the basis or bases for 18 that -- those beliefs? 19 MR. SCHIRMER: Object to form. 20 A First of all, you cannot have a minimum 21 guideline for animal welfare, humane raising of 22 hens, any more than you can have the base</p>



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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 guidelines for food safety and have people that 2 don't understand science come in and change it 3 because it doesn't work that way. We don't do it 4 that way. We've never done it that way. That's 5 the fundamental aspect that we -- I want to make 6 sure that everyone understands.</p> <p>7 We were establishing the minimum 8 guidelines for laying hen -- for laying hens. 9 And the point about not be oblivious means 10 practical. It does birds no good if one percent 11 of the birds in the country are affected by it. 12 We were dealing with 98 percent of the birds in 13 the country.</p> <p>14 And it's -- this is an analogy that 15 would put things in perspective. If you want to 16 maximize bird welfare, then we each have our own 17 laying hen, and we take care of it and we have 18 our own eggs produced. That's not very practical 19 for each of us to have our own hen. So we'd like 20 for someone else to produce our eggs for us. So 21 what's the minimum level of humaneness, animal 22 welfare that's acceptable. That's what we</p>	<p style="text-align: right;">80</p> <p>1 A Well, first of all, we wanted the 2 producers and all the readers and activists to 3 understand that, you know, we're aware of the 4 changes in demographics. And these were 5 science-based polls and surveys that were 6 conducted.</p> <p>7 The second sentence is important 8 because we're separating humane treatment and 9 ethical perspectives. I have an ethical view of 10 something; I may have a perception or values base 11 on how I want to see eggs produced.</p> <p>12 What we established are science-based 13 guidelines. Two of the most conservative 14 measures of animal welfare. And that was 15 important because the producers did not -- some 16 of the producers just did not buy that. Why do 17 we need to give them more space? Here's why. 18 More will live and they'll produce more eggs on 19 an individual basis. There's no better, more 20 conservative measure of welfare than those two. 21 And the science was clear. Multiple studies 22 showed what would happen if you give more space.</p>
<p style="text-align: right;">79</p> <p>1 established with the best scientists at the time.</p> <p>2 Q In the third column on this page 3 starts, "Surveys and polls show that consumers 4 have clearly indicated"; do you see that?</p> <p>5 A Yes.</p> <p>6 Q Can you just read that into the record, 7 please.</p> <p>8 A "Surveys and poles indicate" -- 9 Surveys and polls show that consumers 10 have clearly indicated that they retain 11 confidence in farmers and ranchers to make 12 responsible decisions concerning the welfare of 13 their animals. They also show that consumers 14 regard the humane treatment of farm animals as 15 important, and that their ethical perspective on 16 animal treatment are continuing to evolve."</p> <p>17 Q Dr. Armstrong, was that an accurate 18 statement at the time you authored this article?</p> <p>19 MR. SCHIRMER: Object to form.</p> <p>20 A Yes.</p> <p>21 Q And what -- what was the basis for 22 those statements?</p>	<p style="text-align: right;">81</p> <p>1 And that's what happened. It improved the 2 welfare of the hens.</p> <p>3 Q The paragraph that starts, "Maintaining 4 the present level of consumer confidence"; do you 5 see that, Dr. Armstrong?</p> <p>6 A Yes.</p> <p>7 Q Could you just finally read that 8 paragraph into the record, please.</p> <p>9 A "Maintaining the present level of 10 consumer confidence is critical to the egg 11 production industry. Therefore, it is the 12 responsibility of industry to make carefully 13 researched and considered decisions regarding 14 animal welfare. Producers who adopt sound 15 guidelines for the welfare of their hens and 16 incorporate these into their production 17 operations will have a solid base from which to 18 reassure the public that they are practicing good 19 management and care for their birds."</p> <p>20 Q And do you agree with those statements, 21 Dr. Armstrong?</p> <p>22 MR. SCHIRMER: Object to form.</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 <b>A Yes. Yes.</b></p> <p>2 Q And why do you agree with those</p> <p>3 statements?</p> <p>4 <b>A That comes from my view and my</b></p> <p>5 <b>experience in social responsibility in the food</b></p> <p>6 <b>system, in that producers cannot be in a vacuum.</b></p> <p>7 <b>They have to pay attention to what they're doing,</b></p> <p>8 <b>and they have to work to maintain the confidence</b></p> <p>9 <b>of consumers.</b></p> <p>10 <b>So this was -- this is part of, you</b></p> <p>11 <b>know, while the committee reviewed this whole</b></p> <p>12 <b>document, this is something that's broader than</b></p> <p>13 <b>the committee. This is a very important point.</b></p> <p>14 <b>It's got to start with sound science-based</b></p> <p>15 <b>guidelines, though. Without that, producers</b></p> <p>16 <b>cannot have a firm basis in order to build</b></p> <p>17 <b>consumer confidence.</b></p> <p>18 Q And did you understand the building of</p> <p>19 consumer confidence to be important to UEP in the</p> <p>20 undertaking of this project?</p> <p>21 MR. SCHIRMER: Object to form.</p> <p>22 <b>A Absolutely. Public perception was one</b></p>	<p style="text-align: right;">84</p> <p>1 <b>version. Yeah. Yeah. Okay.</b></p> <p>2 Q So it's an earlier draft?</p> <p>3 <b>A It's a earlier version, yeah. I was</b></p> <p>4 <b>confusing my dates. Sorry.</b></p> <p>5 Q You mentioned before, I think, this</p> <p>6 morning, the UEP Producer Committee for Animal</p> <p>7 Welfare; are you familiar with that committee?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Can you tell me what that committee is?</p> <p>10 <b>A It's a -- I think it's a standing</b></p> <p>11 <b>committee as part of UEP; they have multiple</b></p> <p>12 <b>committees. And this is a group of the members</b></p> <p>13 <b>of UEP, and they discuss topics related to animal</b></p> <p>14 <b>welfare.</b></p> <p>15 Q Did this committee have a role in the</p> <p>16 scientific advisory committee's 2000</p> <p>17 recommendations for animal welfare?</p> <p>18 <b>A The chair --</b></p> <p>19 MR. SCHIRMER: Object to form.</p> <p>20 <b>A -- the chair of the producer animal --</b></p> <p>21 <b>the producer committee, not to get tied up in a</b></p> <p>22 <b>name, was the adviser to the science advisory</b></p>
<p style="text-align: right;">83</p> <p>1 <b>of those factors that was secondary level to</b></p> <p>2 <b>animal welfare, but one we considered.</b></p> <p>3 <b>(Deposition Exhibit 8 was marked for</b></p> <p>4 <b>identification.)</b></p> <p>5 Q Dr. Armstrong, could you take a moment</p> <p>6 to look at the document that's been marked as</p> <p>7 Armstrong 8. It's a confidential document that</p> <p>8 bears the Bates No. UE0331895 through 1919.</p> <p>9 <b>A Yes, I'm familiar with this document.</b></p> <p>10 Q Okay. What is this document?</p> <p>11 <b>A This is the next -- apparently the</b></p> <p>12 <b>second, if I recall correctly, this is the second</b></p> <p>13 <b>iteration of the recommendations from the</b></p> <p>14 <b>scientific advisory committee that's listed in</b></p> <p>15 <b>this case.</b></p> <p>16 <b>Does it list the committee members?</b></p> <p>17 <b>I don't know if the page is missing or</b></p> <p>18 <b>we just didn't list them at this point. It's the</b></p> <p>19 <b>next reiteration -- iteration of this document.</b></p> <p>20 Q Is this an earlier draft of the</p> <p>21 document that was marked as Exhibit No. 2?</p> <p>22 <b>A Oh, yes, it's the May -- it's the May</b></p>	<p style="text-align: right;">85</p> <p>1 <b>committee. So when you saw Barrie Wilcox when we</b></p> <p>2 <b>started in that September 2000 document, he was</b></p> <p>3 <b>the chair of the producer committee. So he was a</b></p> <p>4 <b>liaison. I in turn was the liaison to the</b></p> <p>5 <b>producer committee.</b></p> <p>6 Q And what role did Mr. Wilcox play in --</p> <p>7 if any, in the recommendations that were</p> <p>8 contained in that September 2000 document that's</p> <p>9 been marked as Exhibit No. 2?</p> <p>10 <b>A Advice and support.</b></p> <p>11 Q When you say advice and support, what</p> <p>12 does that mean or entail to you?</p> <p>13 <b>A They would answer questions. They</b></p> <p>14 <b>would provide support, information, get us</b></p> <p>15 <b>places, answer questions. But the committee</b></p> <p>16 <b>members debated, discussed the recommendations</b></p> <p>17 <b>and voted on the recommendations.</b></p> <p>18 Q Did the producer committee vote on the</p> <p>19 recommendations?</p> <p>20 MR. SCHIRMER: Object to form.</p> <p>21 <b>A They did not -- the producer committee</b></p> <p>22 <b>made a recommendation to the UEP board as to</b></p>

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<p style="text-align: right;">86</p> <p>1 whether to accept the recommendations or not. So</p> <p>2 yes, they did. But they did not vote on</p> <p>3 individual components. They had problems with</p> <p>4 individual components and they would ask</p> <p>5 questions, and there would be an iterative</p> <p>6 process to go back and forth. Sometimes it was</p> <p>7 quite involved.</p> <p>8 Q Did the producer committee suggest</p> <p>9 changes to the recommendations before the</p> <p>10 September 2000 version was published?</p> <p>11 MR. SCHIRMER: Object to form.</p> <p>12 A I don't recall -- I think, as I recall,</p> <p>13 they were involved more with -- worried about</p> <p>14 implementing. So I don't recall if they</p> <p>15 recommended changes during that interval or not.</p> <p>16 The representatives on the committee, they could</p> <p>17 voice their opinion, but they had no voting</p> <p>18 status. So I don't recall.</p> <p>19 Q Did you attend meetings of the UEP</p> <p>20 producer committee for animal welfare?</p> <p>21 A Yes.</p> <p>22 Q And why did you attend meetings?</p>	<p style="text-align: right;">88</p> <p>1 Q Okay. What is this document?</p> <p>2 A This is the UEP -- it's a UEP document</p> <p>3 for the United Egg Producers certified program.</p> <p>4 So it's the United Egg Producers Animal Husbandry</p> <p>5 Guidelines for U.S. Egg Laying Flocks.</p> <p>6 Q Did the scientific advisory committee</p> <p>7 have a role in drafting these guidelines?</p> <p>8 A As I recall, we reviewed them. And my</p> <p>9 role and the committee's role was to make sure</p> <p>10 that the main core of our recommendations were</p> <p>11 maintained intact.</p> <p>12 Q Okay. If you could turn to page 2 of</p> <p>13 this document, and I want to direct your</p> <p>14 attention to the section that's entitled UEP's</p> <p>15 Mission on page 2.</p> <p>16 A Yes.</p> <p>17 Q Do you see that?</p> <p>18 A Yes.</p> <p>19 Q In that paragraph, the second sentence</p> <p>20 states, "UEP commissioned an independent</p> <p>21 scientific advisory committee for animal welfare</p> <p>22 in 1999."</p>
<p style="text-align: right;">87</p> <p>1 A To serve as liaison with the</p> <p>2 scientists. It wasn't practical to have all the</p> <p>3 scientists attend. At times, depending on the</p> <p>4 topics, some of the other scientists would join</p> <p>5 me.</p> <p>6 Q Did you attend every meeting of the</p> <p>7 producer committee for animal welfare?</p> <p>8 A No.</p> <p>9 Q Do you have a sense as to how often you</p> <p>10 attended those meetings or a recollection?</p> <p>11 A At the time we were in the throes of</p> <p>12 the major development, it was -- I was a regular</p> <p>13 attendee.</p> <p>14 (Deposition Exhibit 9 was marked for</p> <p>15 identification.)</p> <p>16 Q Dr. Armstrong, if you could just take a</p> <p>17 moment and look at the document that's been</p> <p>18 marked as Armstrong 9.</p> <p>19 MS. SUMNER: For the record, this is a</p> <p>20 confidential document bearing the Bates Nos.</p> <p>21 UE0140563 through 595.</p> <p>22 A Yes, I'm familiar with this document.</p>	<p style="text-align: right;">89</p> <p>1 Is that an accurate statement?</p> <p>2 A '99 or '98, but the rest of it's</p> <p>3 accurate. I'm not quite sure about the date, but</p> <p>4 the sentence is accurate.</p> <p>5 Q The next sentence says, "This committee</p> <p>6 was asked to review the scientific literature on</p> <p>7 topics relevant to the well-being of laying hens</p> <p>8 and to identify areas where further research was</p> <p>9 needed. Additionally, the committee was asked to</p> <p>10 development recommendations based upon existing</p> <p>11 science for presentation to the UEP Producer</p> <p>12 Committee for Animal Welfare board of directors,</p> <p>13 and ultimately to the industry."</p> <p>14 Is that an accurate statement?</p> <p>15 A Yes.</p> <p>16 MR. SCHIRMER: Object to form.</p> <p>17 Q It's an accurate description of what</p> <p>18 you were asked to do as a scientific advisory</p> <p>19 committee?</p> <p>20 A Yes.</p> <p>21 Q The next sentence says, "The Scientific</p> <p>22 Advisory Committee took no responsibility for</p>



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<p style="text-align: right;">90</p> <p>1 mandating these recommendations recognizing that</p> <p>2 the producers must voluntarily accept and</p> <p>3 implement them."</p> <p>4 Is that an accurate statement?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Why did the scientific advisory</p> <p>7 committee believe that producers must voluntarily</p> <p>8 accept and implement their recommendations?</p> <p>9 MR. SCHIRMER: Object to form.</p> <p>10 <b>A Because UEP was -- UEP's a voluntary</b></p> <p>11 <b>organization. And we just accepted that from the</b></p> <p>12 <b>beginning. Our committee has no statutory,</b></p> <p>13 <b>federal or retail authority, so that's all we</b></p> <p>14 <b>could do.</b></p> <p>15 Q Next sentence says, "This historic step</p> <p>16 led to the development of a responsible working</p> <p>17 model for the development and implementation of</p> <p>18 science-based guidelines to improve the welfare</p> <p>19 of laying hens managed in caged and cage-free</p> <p>20 production systems."</p> <p>21 Do you agree with that statement?</p> <p>22 <b>A Absolutely. Our committee would -- our</b></p>	<p style="text-align: right;">92</p> <p>1 Q And what do you mean by that?</p> <p>2 <b>A For example, the UEP board accepted the</b></p> <p>3 <b>guidelines in -- as Exhibit 2 unanimously. They</b></p> <p>4 <b>accepted those. That is -- they recognized that</b></p> <p>5 <b>we have to go beyond 48 square inches, 67 to 86.</b></p> <p>6 <b>They accepted those guidelines.</b></p> <p>7 Q If you can turn to page 3 of this</p> <p>8 document. And I want to direct your attention to</p> <p>9 the section that's entitled Independent</p> <p>10 Scientific Advisory Committee. Do you see that?</p> <p>11 <b>A Yes.</b></p> <p>12 Q The first paragraph there reads, "The</p> <p>13 independent committee was comprised of government</p> <p>14 officials, academicians, scientists, and humane</p> <p>15 association members with all having been selected</p> <p>16 by the Chairman of the Committee."</p> <p>17 Is that an accurate statement?</p> <p>18 <b>A Yes.</b></p> <p>19 Q "The Scientific Advisory Committee</p> <p>20 meets on a regular basis to review the science</p> <p>21 and make recommendations to the UEP Producer</p> <p>22 Committee."</p>
<p style="text-align: right;">91</p> <p>1 <b>committee feels strongly that we developed a</b></p> <p>2 <b>model that should be used by the rest of animal</b></p> <p>3 <b>agriculture. Specifically that you don't put</b></p> <p>4 <b>producers or other industry members and</b></p> <p>5 <b>scientists in the same room and expect to develop</b></p> <p>6 <b>science-based guidelines.</b></p> <p>7 Q The next paragraph, the second sentence</p> <p>8 reads, "The recommendations and guidelines found</p> <p>9 within this document have been accepted and</p> <p>10 presented by the UEP Producer Committee using the</p> <p>11 recommendations from the Scientific Committee as</p> <p>12 a blueprint."</p> <p>13 Do you agree with that statement?</p> <p>14 <b>A Absolutely.</b></p> <p>15 MR. SCHIRMER: Object to form.</p> <p>16 <b>A Throughout my term as chair of the UEP</b></p> <p>17 <b>scientific advisory committee, there were no</b></p> <p>18 <b>substantial periods of time where there was --</b></p> <p>19 <b>where the UEP failed to accept the science-based</b></p> <p>20 <b>recommendations.</b></p> <p>21 <b>Implementation was a different story.</b></p> <p>22 <b>That was more of a practical matter.</b></p>	<p style="text-align: right;">93</p> <p>1 Was that true as of 2008?</p> <p>2 <b>A Yes. It was true throughout my</b></p> <p>3 <b>experience as chair.</b></p> <p>4 Q In the second paragraph there it says,</p> <p>5 "The recommendations and guidelines within UEP's</p> <p>6 first Animal Husbandry Guidelines published in</p> <p>7 October 2000 were based upon those</p> <p>8 recommendations made by the Scientific Advisory</p> <p>9 Committee."</p> <p>10 Is that an accurate statement?</p> <p>11 <b>A Yes.</b></p> <p>12 MR. SCHIRMER: Object to form.</p> <p>13 Q And finally in the third paragraph</p> <p>14 there it says, "The guidelines presented in this</p> <p>15 publication represent the recommendations of the</p> <p>16 Scientific Advisory Committee for best husbandry</p> <p>17 practices to assure the welfare of hens managed</p> <p>18 under cage and cage-free conditions."</p> <p>19 Do you agree with that statement,</p> <p>20 Dr. Armstrong?</p> <p>21 <b>A Yes.</b></p> <p>22 Q Below that there is a list of current</p>

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<p style="text-align: right;">94</p> <p>1 advisory -- current scientific advisory committee</p> <p>2 members. Do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And did those members consent to their</p> <p>5 listing in this document?</p> <p>6 <b>A As I recall, I believe they did.</b></p> <p>7 Q And I'd just note here that it</p> <p>8 indicates that Don Bell is associated with</p> <p>9 Cooperative Extension, University of</p> <p>10 California-Riverside; do you see that?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Is cooperative extension something with</p> <p>13 which you're familiar, Dr. Armstrong?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Can you explain to me what that is?</p> <p>16 <b>A Cooperative extension was formed in the</b></p> <p>17 <b>early 1900s, and the goal of cooperative</b></p> <p>18 <b>extension is to transmit knowledge from the</b></p> <p>19 <b>scientific community to producers, farmers, and</b></p> <p>20 <b>increasingly to the community and consumers.</b></p> <p>21 <b>So every state has a land grant</b></p> <p>22 <b>university. Every state contributes money to</b></p>	<p style="text-align: right;">96</p> <p>1 attention to pages 4 and 5 of these guidelines,</p> <p>2 to the section that's entitled Beak Trimming.</p> <p>3 <b>A Yes.</b></p> <p>4 Q Do you see that?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Dr. Armstrong, what is beak trimming?</p> <p>7 <b>A Beak trimming is the removal of the end</b></p> <p>8 <b>of the beak, the horn part, such that it removes</b></p> <p>9 <b>the sharp point, and it greatly reduces the</b></p> <p>10 <b>chance of two types of pecking -- or the damage</b></p> <p>11 <b>due to two types of pecking. It doesn't</b></p> <p>12 <b>necessarily eliminate it. Birds engage in two</b></p> <p>13 <b>types of pecking behaviors: cannibalistic and</b></p> <p>14 <b>feather pecking.</b></p> <p>15 Q So why is beak trimming done?</p> <p>16 <b>A Beak trimming is required in order to</b></p> <p>17 <b>maintain a low mortality of hens. It's really</b></p> <p>18 <b>required in almost all systems. Some small</b></p> <p>19 <b>free-range will not -- will not do that, but they</b></p> <p>20 <b>will have higher mortality. It is within the</b></p> <p>21 <b>birds' behavior, regardless of the system, to</b></p> <p>22 <b>peck one another in those two manners. And they</b></p>
<p style="text-align: right;">95</p> <p>1 extension. There's a companion agricultural</p> <p>2 research component. In the state of California,</p> <p>3 agriculture and natural resources extension and</p> <p>4 research is operated through the University of</p> <p>5 California system office. So there are extension</p> <p>6 faculty and educators all over the state, and</p> <p>7 there are also different locations where they do</p> <p>8 research.</p> <p>9 <b>Don Bell was a long-term member of the</b></p> <p>10 <b>University of California-Riverside faculty, but</b></p> <p>11 <b>he was also an employee through the cooperative</b></p> <p>12 <b>extension through the system level.</b></p> <p>13 Q And is cooperative extension a federal</p> <p>14 program?</p> <p>15 <b>A It's federal and it's state and local.</b></p> <p>16 <b>But its mandate comes from federal.</b></p> <p>17 Q And do you know which federal agency</p> <p>18 has responsibility for administering that</p> <p>19 program?</p> <p>20 <b>A Yes. I'm quite familiar with it.</b></p> <p>21 <b>USDA.</b></p> <p>22 Q All right. I'd like to direct your</p>	<p style="text-align: right;">97</p> <p>1 will -- cannibalistic pecking is fairly</p> <p>2 self-explanatory.</p> <p>3 Q And have you heard the term "debeak" or</p> <p>4 "debeaking" used?</p> <p>5 <b>A Yes. In fact, one of the first things</b></p> <p>6 <b>we said to the industry is "Stop using that term.</b></p> <p>7 <b>That is not what you're doing, and it is a very</b></p> <p>8 <b>bad public image, public perception. You're beak</b></p> <p>9 <b>trimming. You're not removing the beak."</b></p> <p>10 <b>And they said, "Oh. That makes sense."</b></p> <p>11 Q If you'd take a moment to review the</p> <p>12 guidelines for beak trimming that are listed in</p> <p>13 this section of the 2008 UEP Animal Husbandry</p> <p>14 Guidelines.</p> <p>15 <b>A Would you like me to read them? Would</b></p> <p>16 <b>you like me to talk about --</b></p> <p>17 Q My question to you, Dr. Armstrong, is</p> <p>18 do these guidelines represent the recommendations</p> <p>19 of the scientific committee? And I'd like you to</p> <p>20 review them to the extent necessary to answer</p> <p>21 that question for me.</p> <p>22 <b>A Yes. A major point that was of</b></p>

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<p style="text-align: right;">98</p> <p>1 contention and of concern by the producers was</p> <p>2 only trimming the beak at ten days or younger.</p> <p>3 The producers were not used to doing that, and</p> <p>4 they were concerned about two factors:</p> <p>5 Mortality, but also feed efficiency. If you trim</p> <p>6 the beak early, the science is clear, you don't</p> <p>7 get chronic pain. If you trim the beak after ten</p> <p>8 days, birds will exhibit signs of chronic pain</p> <p>9 resulting from that beak trimming. If you trim</p> <p>10 early, the beak will grow back, and birds tend to</p> <p>11 waste more feed.</p> <p>12 So we had to be firm, but we also said</p> <p>13 that if there's a problem when birds start</p> <p>14 pecking one another, and the issue of mortality</p> <p>15 comes to play, then the pain that would be caused</p> <p>16 by a second trim is much less than the mortality</p> <p>17 that would occur if you don't trim. So that was</p> <p>18 absolutely something that was back and forth that</p> <p>19 was added that is very science- and</p> <p>20 welfare-based.</p> <p>21 So as you'll see in Point 8 on page 5,</p> <p>22 if a trimmed beak grows back, a second trim may</p>	<p style="text-align: right;">100</p> <p>1 Q Then it says, "Whenever possible,</p> <p>2 genetic stock should be used that require little</p> <p>3 or no beak trimming. UEP recommends beak</p> <p>4 trimming only when necessary to prevent feather</p> <p>5 pecking and cannibalism and only when carried out</p> <p>6 by properly trained personnel monitored regularly</p> <p>7 for quality and control."</p> <p>8 Is that guidance consistent with the</p> <p>9 scientific committee's recommendations?</p> <p>10 MR. SCHIRMER: Object to form.</p> <p>11 A It's completely consistent with the</p> <p>12 science-based guidelines, and this is an example</p> <p>13 of why a committee is needed long-term and why</p> <p>14 things evolved. The actual -- some of the</p> <p>15 research that was done to prove that statement</p> <p>16 was done at Purdue University by a professor.</p> <p>17 And he selected birds strictly on behavior, and</p> <p>18 they did not require beak trimming. But the bird</p> <p>19 was -- there were many other problems associated</p> <p>20 with that, so it wasn't practical.</p> <p>21 The companies that produced these birds</p> <p>22 are including selection for behavior based on his</p>
<p style="text-align: right;">99</p> <p>1 be needed. A preventive second trim is not</p> <p>2 recommended after eight weeks old; however,</p> <p>3 therapeutic beak trimming may be performed at any</p> <p>4 age if an outbreak of cannibalism occurs.</p> <p>5 And if you want to put that in</p> <p>6 perspective, I know of examples where producers</p> <p>7 were new with some of the non-cage systems, and</p> <p>8 I've literally heard producers say, "I had a 30</p> <p>9 to 40 percent mortality." Because they were</p> <p>10 learning to manage, the birds cannibalized each</p> <p>11 other. So that's a -- beak trimming is a good</p> <p>12 example of the dynamic evolution aspect of the</p> <p>13 guidelines.</p> <p>14 Q I want to ask you a question about a</p> <p>15 specific paragraph in this beak trimming section</p> <p>16 of these guidelines. The second paragraph starts</p> <p>17 with, "Scientific evidence suggests that primary</p> <p>18 breeders of egg-laying birds can select a more</p> <p>19 docile bird and minimize the need to beak trim</p> <p>20 from a behavioral point of view."</p> <p>21 Do you see that?</p> <p>22 A Yes.</p>	<p style="text-align: right;">101</p> <p>1 research, and progress is being made. But as of</p> <p>2 the time this document was printed, the</p> <p>3 scientific committee was vehement in recommending</p> <p>4 beak trimming because the genetic change had not</p> <p>5 occurred significantly to permit birds to be left</p> <p>6 alone and not beak trimmed.</p> <p>7 Q And was that true as of 2008?</p> <p>8 A Absolutely true as of 2008. I suspect</p> <p>9 it's true still today. Changing bird behavior</p> <p>10 takes time.</p> <p>11 Q Is beak trimming still required for</p> <p>12 most birds in housing systems?</p> <p>13 A Yes.</p> <p>14 Q And why is that?</p> <p>15 A If birds -- if beaks are not trimmed,</p> <p>16 mortality will be elevated. And, again, that is</p> <p>17 a very conservative measure of animal welfare.</p> <p>18 Q Mortality?</p> <p>19 A Mortality. Death. And then sometimes</p> <p>20 near death from being pecked and -- near death.</p> <p>21 Yes.</p> <p>22 Q I'd like to direct your attention now</p>

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<p style="text-align: right;">102</p> <p>1 to pages 5 and 6 of the UEP guidelines, the</p> <p>2 section that is entitled Molting --</p> <p>3 <b>A Yes.</b></p> <p>4 <b>Q</b> -- which we spoke about a little</p> <p>5 earlier. But could you please explain for me</p> <p>6 again, Dr. Armstrong, what is molting?</p> <p>7 <b>A</b> So if you look at page 5 in the first</p> <p>8 paragraph, "Molting is a normal process of</p> <p>9 chickens and other feathered species. In the</p> <p>10 wild state, birds usually shed and renew old,</p> <p>11 worn plumage in preparation for cold weather and</p> <p>12 their migratory flights. Chickens kept for</p> <p>13 commercial egg production have a different</p> <p>14 molting pattern. They have been bred for high</p> <p>15 performance, and their environment, with respect</p> <p>16 to temperature and light, is usually modified to</p> <p>17 remove major seasonal influences."</p> <p>18 So molting is a practice that allows</p> <p>19 rejuvenation of the hen, rejuvenation of the</p> <p>20 flock, and another cycle of laying. So it has an</p> <p>21 advantage from a corporate perspective, multiple</p> <p>22 animal perspective, that you don't have to use</p>	<p style="text-align: right;">104</p> <p>1 <b>issue that the industry has dealt with for years</b></p> <p>2 <b>and will continue to deal with. The fluid egg</b></p> <p>3 <b>industry doesn't have to worry about it as the</b></p> <p>4 <b>eggs are -- it's pasteurized, fluid egg's</b></p> <p>5 <b>pasteurized. So that's why there are safe</b></p> <p>6 <b>handling guidelines. When you cook eggs, you</b></p> <p>7 <b>crack your eggs and you wash your hands because</b></p> <p>8 <b>one in 20- or 30,000 eggs is contaminated with</b></p> <p>9 <b>salmonella. Salmonella has been shown to</b></p> <p>10 <b>increase during a food-withdrawal-induced molt.</b></p> <p>11 <b>Q</b> I'd like you to look on page 6, please,</p> <p>12 at the Guidelines for Molt Program.</p> <p>13 <b>A Yes.</b></p> <p>14 <b>Q</b> And, if you could just take a minute to</p> <p>15 review those. My question is, do these</p> <p>16 guidelines represent the recommendations of the</p> <p>17 scientific advisory committee?</p> <p>18 <b>A Yes.</b></p> <p>19 <b>Q</b> The first guideline there reads only</p> <p>20 non-feed-withdrawal molts will be permitted after</p> <p>21 January 1st, 2006. Do you see that?</p> <p>22 <b>A Yes.</b></p>
<p style="text-align: right;">103</p> <p>1 another set of hens -- another set of chicks.</p> <p>2 Now, why is that important? We can't</p> <p>3 produce just females. We produce males. So</p> <p>4 every -- for every female that's produced,</p> <p>5 there's a male chick that's euthanized shortly</p> <p>6 after hatching. That's a welfare issue. But</p> <p>7 it's an acceptable welfare issue in the scheme of</p> <p>8 providing eggs for human beings.</p> <p>9 So, again, the molt is positive, but</p> <p>10 starving the birds is negative. And we had many</p> <p>11 producers push back on this. Molting is natural.</p> <p>12 All -- all birds molt. They don't eat when</p> <p>13 they're molting. And we said that's different.</p> <p>14 That's a natural situation. When you remove feed</p> <p>15 from a commercial laying hen, you suppress the</p> <p>16 immune system.</p> <p>17 You'll also -- you'll also note in our</p> <p>18 guidelines we talk about a linkage to food safety</p> <p>19 as well. The immune system being suppressed. So</p> <p>20 there's a linkage to food safety.</p> <p>21 <b>Q</b> And explain that for me, please.</p> <p>22 <b>A</b> If you suppress the -- salmonella is an</p>	<p style="text-align: right;">105</p> <p>1 <b>Q</b> Was that in the original scientific</p> <p>2 advisory committee September 2000</p> <p>3 recommendations?</p> <p>4 <b>A No.</b></p> <p>5 <b>Q</b> What was the approach that was taken to</p> <p>6 molting in the original 2000 -- September 2000</p> <p>7 recommendations of the scientific advisory</p> <p>8 committee?</p> <p>9 <b>A</b> Well, this is an example of practical,</p> <p>10 because at that time feed withdrawal was the best</p> <p>11 way to induce a molt, and they did not have a</p> <p>12 practical alternative. So the committee agreed</p> <p>13 to continue that, but we put certain guidelines</p> <p>14 in place to minimize the impact on the bird's</p> <p>15 welfare. Not -- not eliminate, but to minimize</p> <p>16 the negative impact.</p> <p>17 Subsequent to the 2000, research was</p> <p>18 conducted -- not by any of the committee members,</p> <p>19 as I recall, but by other scientists in the</p> <p>20 U.S. -- that, plus existing research, led to the</p> <p>21 confidence that feed withdrawal methods were</p> <p>22 available and could be a substitute, in fact a</p>

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<p style="text-align: right;">106</p> <p>1 <b>replacement. Therefore, only non-feed-withdrawal</b></p> <p>2 <b>molt method -- molt methods will be permitted</b></p> <p>3 <b>after January 1, 2006. That's a good example of</b></p> <p>4 <b>the evolution of the guidelines.</b></p> <p>5 Q So, based on the research, the research</p> <p>6 showed that non-feed withdrawal molts could be</p> <p>7 achieved; is that correct?</p> <p>8 A In a --</p> <p>9 MR. SCHIRMER: Object to form.</p> <p>10 A Yes. The research demonstrated that a</p> <p>11 non-feed withdrawal molt could be induced in a</p> <p>12 practical manner.</p> <p>13 Q And then were the scientific advisory</p> <p>14 committee's recommendations modified based on</p> <p>15 that research?</p> <p>16 A Yes.</p> <p>17 MR. SCHIRMER: Object to form.</p> <p>18 Q And how were they modified?</p> <p>19 A I don't recall. I think the original</p> <p>20 guidelines that were published in Feedstuffs and</p> <p>21 modified, it didn't require -- it didn't require</p> <p>22 that we change the essence of our guidelines, it</p>	<p style="text-align: right;">108</p> <p>1 attention first to one of the guidelines on page</p> <p>2 11. It's No. 2 which reads, "All hens should be</p> <p>3 able to stand comfortably upright in their cage.</p> <p>4 The slope of the cage floor should not exceed</p> <p>5 8 degrees." Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Is that recommendation consistent with</p> <p>8 the recommendations of the scientific advisory</p> <p>9 committee?</p> <p>10 A Yes.</p> <p>11 MR. SCHIRMER: Object to form.</p> <p>12 Q Do you have an understanding as to why</p> <p>13 these guidelines did not refer specifically to a</p> <p>14 cage height of 16 to 17 inches?</p> <p>15 A Yes.</p> <p>16 Q And what is that understanding?</p> <p>17 A Originally we had a lot of discussion</p> <p>18 about a more prescriptive standard, a more</p> <p>19 prescriptive guideline, that is 16 to 17, you</p> <p>20 know, the height of a bird. We had debates and</p> <p>21 discussions about how the EU was handling it and</p> <p>22 everyone else. But then we came to more of a</p>
<p style="text-align: right;">107</p> <p>1 was more the implementation. We said at the</p> <p>2 beginning what was good and bad about the molt</p> <p>3 We said at the beginning you should use a</p> <p>4 non-feed withdrawal, or not molt at all. But it</p> <p>5 wasn't until 2006 that the producers were able to</p> <p>6 implement it on a practical basis.</p> <p>7 So our view of the science didn't</p> <p>8 change over time. It was the ability to</p> <p>9 implement the science-based guidelines. The</p> <p>10 practical aspect of animal welfare.</p> <p>11 Q I'd like to turn your attention now in</p> <p>12 these guidelines to pages 11 and 12, the Housing</p> <p>13 and Space Guidelines.</p> <p>14 A Yes.</p> <p>15 Q If you could jump there. And again, if</p> <p>16 you could just take a moment to review the</p> <p>17 guidelines for cage production systems on pages</p> <p>18 11 and 12, and my question is, did these</p> <p>19 guidelines represent the recommendations of the</p> <p>20 scientific committee?</p> <p>21 A Yes.</p> <p>22 Q Specifically I want to direct your</p>	<p style="text-align: right;">109</p> <p>1 performance-based guideline. Because we didn't</p> <p>2 want producers taking advantage of a prescriptive</p> <p>3 and, in essence, cheating. We didn't really say</p> <p>4 cheating, but it was basically what someone could</p> <p>5 do.</p> <p>6 So the performance guideline was</p> <p>7 established, and the committee felt very</p> <p>8 comfortable with that. The welfare aspect of</p> <p>9 this is all birds should be able to stand. Not</p> <p>10 with their head out of the top of the cage if</p> <p>11 they happen to be on the top, but the birds</p> <p>12 should be able to stand comfortably.</p> <p>13 And I don't think -- and when we put it</p> <p>14 that way, it's very difficult for anyone to say,</p> <p>15 well, that's not a minimum guideline. That is a</p> <p>16 minimum guideline. That's a good example of a</p> <p>17 minimum guideline: A bird should be able to</p> <p>18 stand comfortably.</p> <p>19 Q I'd like you to take a look at the</p> <p>20 fourth guideline on that same page which reads,</p> <p>21 "Feeder space should be sufficient to allow all</p> <p>22 birds to eat at the same time." Do you see that?</p>



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<p style="text-align: right;">110</p> <p>1       <b>A Yes.</b></p> <p>2       <b>Q</b> And is that recommendation consistent</p> <p>3 with the recommendations of the scientific</p> <p>4 advisory committee?</p> <p>5       <b>A Yes. At that time.</b></p> <p>6       MR. SCHIRMER: Object to form.</p> <p>7       <b>A Yes, it is. At that time.</b></p> <p>8       <b>Q</b> Do you have an understanding as to why</p> <p>9 the guidelines did not refer specifically to a</p> <p>10 minimum of four inches of feeder space per bird?</p> <p>11       <b>A Yes.</b></p> <p>12       <b>Q</b> What is that understanding?</p> <p>13       <b>A Again, this is -- at this time, 2008,</b></p> <p>14 <b>this document, as well as the scientific</b></p> <p>15 <b>recommendation, was more of a performance</b></p> <p>16 <b>standard. This was a matter that was debated</b></p> <p>17 <b>back and forth and, frankly, the science</b></p> <p>18 <b>review -- a meta analysis of the science was not</b></p> <p>19 <b>clear.</b></p> <p>20       <b>We knew that the overriding factor</b></p> <p>21 <b>would be if you give birds from 48 and increase</b></p> <p>22 <b>them to 67, you're going to deal with that issue</b></p>	<p style="text-align: right;">112</p> <p>1       <b>A Exactly. Yes.</b></p> <p>2       <b>(Deposition Exhibit 10 was marked for</b></p> <p>3 <b>identification.)</b></p> <p>4       <b>Q</b> Dr. Armstrong, if you could take a</p> <p>5 moment to look at the document that's been marked</p> <p>6 as Armstrong 10. It's a confidential document</p> <p>7 bearing the Bates Nos. UE0297533 through 7536.</p> <p>8       I'm going to ask you a question really</p> <p>9 just about the last paragraph on the first page,</p> <p>10 the update on the feeder space project that's</p> <p>11 mentioned in these minutes, but feel free to take</p> <p>12 as much time as you need to look at the minutes</p> <p>13 to refresh yourself about the meeting.</p> <p>14       <b>A Okay.</b></p> <p>15       <b>Q</b> So these are minutes from a UEP Animal</p> <p>16 Welfare and Public Relations Committee on</p> <p>17 October 15th, 2008, that was held in Greensboro,</p> <p>18 Georgia. Did you attend this meeting,</p> <p>19 Dr. Armstrong?</p> <p>20       <b>A Yes.</b></p> <p>21       <b>Q</b> Why did you attend this meeting?</p> <p>22       <b>A It was part of my role as liaison.</b></p>
<p style="text-align: right;">111</p> <p>1       <b>somewhat.</b></p> <p>2       <b>We ended up conducting a set of studies</b></p> <p>3 <b>here at Purdue University looking at the strains</b></p> <p>4 <b>at the time, and different -- I don't recall the</b></p> <p>5 <b>actual amount of feeder space, but it was a very</b></p> <p>6 <b>carefully conducted study. And we found that the</b></p> <p>7 <b>particular strain of bird used, which represented</b></p> <p>8 <b>a lot of the industry, the birds performed quite</b></p> <p>9 <b>well with a wide range of feeder space. And it</b></p> <p>10 <b>did not add clarity at all. And in fact it</b></p> <p>11 <b>validated a point some of the producers had been</b></p> <p>12 <b>saying. Why worry about four inches? These</b></p> <p>13 <b>birds are adapting; they're eating. So we went</b></p> <p>14 <b>to a performance standard.</b></p> <p>15       <b>Feeder space should be sufficient to</b></p> <p>16 <b>allow all birds to eat at the same time. Feeder</b></p> <p>17 <b>space is not that big of a issue is what we found</b></p> <p>18 <b>through our study. Space per bird is the bigger</b></p> <p>19 <b>issue.</b></p> <p>20       <b>Q</b> And that was a conclusion that you came</p> <p>21 to by the time these guidelines were published in</p> <p>22 2008?</p>	<p style="text-align: right;">113</p> <p>1       <b>Q</b> Did you provide an update on feeder</p> <p>2 space at this meeting?</p> <p>3       <b>A Apparently so.</b></p> <p>4       <b>Q</b> And what did you tell the committee</p> <p>5 regarding feeder space at this meeting?</p> <p>6       <b>A I don't recall the details. The</b></p> <p>7 <b>minutes indicate that I provided an update on the</b></p> <p>8 <b>feeder space project and noted that clearly no</b></p> <p>9 <b>additional feeder space is needed. "In regards</b></p> <p>10 <b>to the epidemiological study, Dr. Armstrong noted</b></p> <p>11 <b>there were no updates at this time but the study</b></p> <p>12 <b>was coming along."</b></p> <p>13       <b>The first sentence has do with the</b></p> <p>14 <b>study I mentioned at Purdue University where we</b></p> <p>15 <b>provided a range in different amounts of feeder</b></p> <p>16 <b>space, and there were no changes in mortality, no</b></p> <p>17 <b>changes in per-egg -- per-hen egg production, our</b></p> <p>18 <b>two conservative measures of animal welfare. I</b></p> <p>19 <b>don't recall whether we had behavior study --</b></p> <p>20 <b>videotapes of behavior in that study at all.</b></p> <p>21       <b>The epidemiological study was -- I</b></p> <p>22 <b>don't recall all the details, but it was looking</b></p>

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<p style="text-align: right;">114</p> <p>1 at a variety of data collected from industry much</p> <p>2 like you would look for disease. That's why they</p> <p>3 say epidemiological and look at correlations with</p> <p>4 feeder space, but I don't recall what -- the</p> <p>5 details.</p> <p>6 Q What did you mean when you advised the</p> <p>7 committee that clearly no additional feeder space</p> <p>8 is needed?</p> <p>9 A That the --</p> <p>10 MR. SCHIRMER: Object to form.</p> <p>11 A The state -- the first sentence when I</p> <p>12 said, "clearly no additional feeder space is</p> <p>13 needed," was in reference to the scientific</p> <p>14 committee's inability to say a specific linear</p> <p>15 inch of feeder space was needed because the</p> <p>16 scientific data would not support that. So all</p> <p>17 we could do, and we believe was the right thing,</p> <p>18 was to go to the performance standard and</p> <p>19 indicate birds should be able to eat.</p> <p>20 Q Thank you. I'd like you to turn back</p> <p>21 now to the 2008 edition of the guidelines --</p> <p>22 A Yes.</p>	<p style="text-align: right;">116</p> <p>1 MR. SCHIRMER: Object to form.</p> <p>2 Q And I'd like to look at the one right</p> <p>3 below that about light. It reads, "Lights should</p> <p>4 be allowed" -- sorry.</p> <p>5 "Lights should be provided to allow</p> <p>6 effective inspection of all birds. Inspection of</p> <p>7 the birds should be conducted daily. Light</p> <p>8 intensity should be 0.5 to 1-foot candle for all</p> <p>9 birds at feeding levels during production."</p> <p>10 Can you explain to me what means?</p> <p>11 A The first part means you've got to have</p> <p>12 sufficient light to be able to see in a cage and</p> <p>13 look into the back of the cage and see if there</p> <p>14 is a bird that's dead or ill or not mobile. It's</p> <p>15 not a given that at that time that all birds were</p> <p>16 inspected daily. It was not -- it wasn't</p> <p>17 necessarily a common practice to look at every</p> <p>18 bird every day.</p> <p>19 And then the light intensity was just a</p> <p>20 minimum level for all birds at feeding. So those</p> <p>21 are the components of Point 8.</p> <p>22 Q And does that guideline represent the</p>
<p style="text-align: right;">115</p> <p>1 Q -- which was the prior exhibit. And we</p> <p>2 were talking about the cage production systems</p> <p>3 guidelines.</p> <p>4 A Yes.</p> <p>5 Q And I'd like you now to move over to</p> <p>6 page 12. I want to ask you about a couple of the</p> <p>7 guidelines on that page.</p> <p>8 A Yes.</p> <p>9 Q Number 7 reads, "Poultry houses should</p> <p>10 be designed to provide a continuous flow of fresh</p> <p>11 air for every bird. Sufficient ventilation to</p> <p>12 minimize levels of carbon monoxide, ammonia,</p> <p>13 hydrogen sulfide and dust is critically</p> <p>14 important. The ammonia concentration to which</p> <p>15 the birds are exposed should ideally be less than</p> <p>16 10 ppm and should not exceed 25 ppm, but</p> <p>17 temporary excesses should not adversely affect</p> <p>18 bird health."</p> <p>19 Does that guideline represent the</p> <p>20 recommendations of the scientific advisory</p> <p>21 committee, Dr. Armstrong?</p> <p>22 A Yes.</p>	<p style="text-align: right;">117</p> <p>1 recommendations of the scientific advisory</p> <p>2 committee?</p> <p>3 A Yes.</p> <p>4 MR. SCHIRMER: Object to form.</p> <p>5 Q Let's just go back to the ammonia one</p> <p>6 for a minute. Can you explain to me what is the</p> <p>7 problem with ammonia in cage production systems?</p> <p>8 MR. SCHIRMER: Object to form.</p> <p>9 A From a -- from a practical perspective,</p> <p>10 I've been in houses with over 25 parts per</p> <p>11 million. And whether it's 50 or even higher, one</p> <p>12 of the first things that happens is to eyes; it's</p> <p>13 very serious burning.</p> <p>14 From a scientific perspective, it's</p> <p>15 very clear from the research that birds should</p> <p>16 not be exposed chronically to 25 parts per</p> <p>17 million or above. They will have eye damage,</p> <p>18 they will have lung problems. It is a bad</p> <p>19 situation. There's no question from a scientific</p> <p>20 perspective that that impacts animal welfare.</p> <p>21 As you recall, I talked about touring</p> <p>22 an egg-laying facility in Iowa. At the time the</p>

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<p style="text-align: right;">118</p> <p>1 guidelines were developed, there were many 2 facilities that were called A frame, where 3 sometimes manure would drop on other birds, and 4 the manure was stored in the house. 5 Ammonia levels -- in that type of 6 system it's very difficult to get ammonia below 7 25, let alone 50. I even -- this was a 8 contentious point for some producers. I recall 9 clearly sitting in my office at Purdue University 10 one evening talking to a producer arguing that in 11 the upper Midwest, "I don't see how it's ever 12 going to be practical to get ammonia below 50. 13 It's sometimes hard to get it below 100." 14 Here is an example where the scientific 15 committee stuck to our science from the very 16 beginning and said 25, ideally it should be less 17 than 10. And we didn't say when, but the 18 industry accepted -- the board accepted those 19 guidelines, but there were minority numbers of 20 members that did not accept it, and there are 21 production facilities out there today that are 22 still at 48 square inches and still have ammonia</p>	<p style="text-align: right;">120</p> <p>1 per bird. And then if two birds die, then all of 2 a sudden those eight birds have more than 67 3 square inches per bird. 4 Q What is the scientific advisory -- 5 Well, does the scientific advisory 6 committee have a position on backfilling? 7 A Absolutely we have a position on 8 backfilling. 9 Q And what is the scientific advisory 10 committee's position on backfilling? 11 A Very negative. 12 Q Why? 13 A If you have a group of animals, they 14 have been put in there at a certain week of age 15 when they are ready to start laying eggs, they 16 develop a hierarchy. We call it pecking order. 17 And that same thing translates to all -- all 18 animals. We talk about a pecking order. That's 19 established. Those birds have been in there for 20 some time, and then you throw a novel bird or two 21 novel birds novel to those birds, they will hurt 22 those birds. They will fight those birds. It is</p>
<p style="text-align: right;">119</p> <p>1 levels over 25 parts per million of ammonia. And 2 I've been saying for years, that is inhumane 3 production, that's inhumane housing of laying 4 hens. 5 Q Let's turn to page 13. I'd like to 6 direct your attention to the section of the 7 guidelines that is entitled Backfilling. Do you 8 see that? 9 A Yes. 10 Q Dr. Armstrong, what is backfilling? 11 A Backfilling is a practice in which -- 12 where birds die in a cage over a period of time, 13 then birds are replaced. So you may have five 14 hens, you may have six hens, you may have ten 15 hens, that's what the guidelines would allow. 16 Two birds die, let's put two birds back in. 17 Q When you say that's what the guidelines 18 would allow, what do you mean by that? 19 A Depending on the cage configuration, if 20 they're so many square inches, if it were 670 21 square inches and you could put ten birds in 22 there, and that would get you 67 square inches</p>	<p style="text-align: right;">121</p> <p>1 a detriment to the welfare of the bird to put 2 them in that backfilling situation. 3 There was no equivocation by the 4 committee on this aspect of backfilling. That's 5 where the practical aspect did not match up 6 with -- with the welfare. Because the welfare 7 impact is so high, we couldn't get over that 8 hurdle. If a bird had been traumatized a little 9 bit -- 10 Anyway, you get my point. Negative. 11 Q Are there other -- any other welfare 12 problems with backfilling other than what you've 13 just described? 14 A There are -- 15 MR. SCHIRMER: Object to form. 16 A -- could -- there could be other 17 problems that could be chronic welfare. There 18 could be -- you know, there could be disease or 19 other aspects. But the committee focused on the 20 behavior aspects of how the existing birds in a 21 cage would react to the novel birds being placed 22 in the cage.</p>



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<p style="text-align: right;">122</p> <p>1 Q When you say there could be problems 2 like disease, what do you mean by that?</p> <p>3 A Well, it's just a general practice that 4 if you go to an egg -- if you go into an egg 5 house, I mean if they let you in, you are going 6 to take a shower and put on their coveralls, 7 et cetera, et cetera. So moving birds from one 8 barn to the next even on the same farm is not 9 exactly the best thing to do.</p> <p>10 But within a farm that may not be as 11 big an issue. The main issue for the committee 12 was behavior.</p> <p>13 Q Did anyone on the scientific committee 14 think that backfilling was okay as an animal 15 welfare matter?</p> <p>16 MR. SCHIRMER: Object to form.</p> <p>17 A I can't recall specific discussions, 18 but there was a typical response from Don Bell to 19 support ongoing practices. But I don't recall if 20 this was one. But there was somewhat of a 21 attachment to continuing practices from Don's 22 perspective.</p>	<p style="text-align: right;">124</p> <p>1 I can also say this is an example of 2 one of the aspects that we did not foresee in the 3 original discussion. We did not foresee the 4 issues related to backfilling. We didn't think 5 through that. But it's a real practical matter. 6 And from a practical perspective it makes common 7 sense. I've got -- you know, ten birds can be in 8 there and three have died, and I've got eight 9 weeks left. I've got three spots empty.</p> <p>10 That makes sense. But it doesn't if 11 you're looking first and foremost at the welfare 12 of the hen, and that's what we were doing.</p> <p>13 (Deposition Exhibit 11 was marked for 14 identification.)</p> <p>15 Q Dr. Armstrong, I've marked as Armstrong 16 11 a document that bares the Bates No. NUCAL, 17 that's N-U-C-A-L-08md2002-0001116.</p> <p>18 A Mm-hmm.</p> <p>19 Q Do you recognize this document?</p> <p>20 A I do.</p> <p>21 Q Can you tell me what it is?</p> <p>22 A This is a memo from me representing the</p>
<p style="text-align: right;">123</p> <p>1 Q Was backfilling addressed in the 2 September 2000 scientific advisory committee 3 recommendations?</p> <p>4 A I would have to look. I don't recall.</p> <p>5 Q Could -- do you mind taking a look? I 6 don't believe that it was, but --</p> <p>7 A No. As I recall, this is an example of 8 something that was brought to our attention -- 9 brought to my attention, and this is part of that 10 liaison with the producer committee. And some 11 producers recognized it was a bad thing, some 12 producers wanted to be able to keep doing it. 13 "What's the problem?"</p> <p>14 I took -- I didn't say on the spot 15 what's the problem; I went back to the scientific 16 committee and we discussed it. I never -- I 17 would never speak for the scientific committee 18 unless we had discussions. So we would hold 19 phone calls or meetings to discuss topics. So 20 while I can't recall the details and the dates of 21 this, I can assure you there was more than one 22 discussion of backfilling.</p>	<p style="text-align: right;">125</p> <p>1 Scientific Advisory Committee for Animal Welfare, 2 and expressing our extreme opposition to 3 backfilling.</p> <p>4 Q Is it an accurate summary of the 5 scientific advisory committee's position on 6 backfilling?</p> <p>7 A Yes. It is --</p> <p>8 MR. SCHIRMER: Object to form.</p> <p>9 A It is more accurate than my recent 10 recollection.</p> <p>11 Q And what do you mean by that?</p> <p>12 A Well, it clearly states the rationale 13 in the middle paragraph.</p> <p>14 Q Can you read that into the record, 15 please.</p> <p>16 A "Bird welfare is compromised when 17 backfilling is done every month to replace 18 mortality for the purpose of keeping houses full. 19 Science has shown that mixing birds from other 20 flocks and with different ages increases 21 susceptibility to disease. Older hens may harbor 22 disease-causing pathogens that are easily</p>

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<p style="text-align: right;">126</p> <p>1 transmitted to younger pullets that may not have</p> <p>2 been fully vaccinated or have had the opportunity</p> <p>3 to develop full immunocompetency. In addition,</p> <p>4 the introduction of unfamiliar birds to resident</p> <p>5 birds increases social competition and stress,</p> <p>6 which can increase mortality and decrease</p> <p>7 production."</p> <p>8 Again, notice the words "increase</p> <p>9 mortality and decrease production."</p> <p>10 The other point that I would make is</p> <p>11 the younger birds that are in there that are</p> <p>12 being beaten up, that's likely going to suppress</p> <p>13 their immune system and make them more</p> <p>14 suppressed. Make them more susceptible to what</p> <p>15 normally they'd fend off.</p> <p>16 Q Did you write this letter,</p> <p>17 Dr. Armstrong?</p> <p>18 A I did, after careful review by the</p> <p>19 advisory committee.</p> <p>20 Q Do you recall why you wrote this</p> <p>21 letter?</p> <p>22 MR. SCHIRMER: Object to form.</p>	<p style="text-align: right;">128</p> <p>1 recommendation of the scientific advisory</p> <p>2 committee?</p> <p>3 MR. SCHIRMER: Object to form.</p> <p>4 A Yes. It's completely in line with the</p> <p>5 scientific advice.</p> <p>6 MS. SUMNER: Why don't we take a short</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: We are going off the</p> <p>9 record. The time is 10:55 a.m.</p> <p>10 (A recess was taken.)</p> <p>11 THE VIDEOGRAPHER: This is the</p> <p>12 beginning of Tape 3. The time is 11:14 a.m., and</p> <p>13 we are back on the record.</p> <p>14 Q Dr. Armstrong, sticking with the 2008</p> <p>15 guidelines that we've been discussing, I'd like</p> <p>16 you to turn to page 14 and look at the section</p> <p>17 entitled Time Period for Implementations.</p> <p>18 A Yes.</p> <p>19 Q Did the scientific advisory committee</p> <p>20 make a recommendation regarding the time period</p> <p>21 for implementation of the animal welfare</p> <p>22 guidelines?</p>
<p style="text-align: right;">127</p> <p>1 A Because of the -- because the</p> <p>2 iterations and interactions with the industry, we</p> <p>3 learned that this was a problem occurring</p> <p>4 realtime in the field with producers.</p> <p>5 Q I'd like to direct you back to the 2008</p> <p>6 guidelines.</p> <p>7 A Yes.</p> <p>8 Q The paragraph on backfilling that we</p> <p>9 were reviewing just a moment ago.</p> <p>10 A What page was that again?</p> <p>11 Q 13, I believe.</p> <p>12 A Okay.</p> <p>13 Q Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Okay. And let's take a moment to</p> <p>16 review that guideline on backfilling.</p> <p>17 A Okay.</p> <p>18 Q Do you see it reads, "Other than a</p> <p>19 catastrophic event, backfilling of cages to</p> <p>20 replace mortality is prohibited under the United</p> <p>21 Egg Producers certified program."</p> <p>22 Does that guideline reflect the</p>	<p style="text-align: right;">129</p> <p>1 A As I recall, we discussed it, but we</p> <p>2 were not formally involved in establishing this</p> <p>3 table. We said as soon as possible.</p> <p>4 Q Do you know who devised this table for</p> <p>5 implementation?</p> <p>6 A I would assume the producer committee.</p> <p>7 Q Do you have an understanding as to why</p> <p>8 the guidelines were to be implemented over the --</p> <p>9 this six-year period?</p> <p>10 MR. SCHIRMER: Object to form.</p> <p>11 A It was a practical matter with regard</p> <p>12 to facility, facility turnover, just the</p> <p>13 practical matter of laying hen management,</p> <p>14 production, et cetera. It was just practicality.</p> <p>15 Q Would the committee have preferred that</p> <p>16 the guidelines be implemented more quickly?</p> <p>17 A I think the committee would have</p> <p>18 preferred --</p> <p>19 MR. SCHIRMER: Object to form.</p> <p>20 A -- but the committee was pleased that</p> <p>21 the timetable was accelerated.</p> <p>22 Q And by accelerated, what do you mean or</p>

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<p style="text-align: right;">130</p> <p>1 what are you referring to?</p> <p>2 <b>A I don't recall the initial timetable,</b></p> <p>3 <b>but it was much longer than what you see on page</b></p> <p>4 <b>14. And in the committee's -- I think the</b></p> <p>5 <b>committee's opinion, individual opinion, not</b></p> <p>6 <b>necessarily discussed as a group, that was</b></p> <p>7 <b>because of the increased involvement of members</b></p> <p>8 <b>of the retail sector. When McDonald's announced</b></p> <p>9 <b>their guidelines, when Burger King announced</b></p> <p>10 <b>their guidelines, when other groups started</b></p> <p>11 <b>paying a lot more attention to science-based</b></p> <p>12 <b>guidelines for laying hens, the producers had the</b></p> <p>13 <b>impetus and through other discussion points to</b></p> <p>14 <b>move it along. That would have been -- that was</b></p> <p>15 <b>my opinion at the time, and I think it's an</b></p> <p>16 <b>opinion shared by the committee members.</b></p> <p>17 <b>Q Are you familiar with the term "house</b></p> <p>18 <b>average" as used in the guidelines?</b></p> <p>19 <b>A Yes. But that's not -- that's not a</b></p> <p>20 <b>topic that I was -- that I recall with great</b></p> <p>21 <b>detail.</b></p> <p>22 <b>Q What is your understanding of house</b></p>	<p style="text-align: right;">132</p> <p>1 <b>the fact that the industry was in the process of</b></p> <p>2 <b>phasing in going from -- going from 48 to 67. So</b></p> <p>3 <b>there was -- there was quite a bit of tolerance</b></p> <p>4 <b>on the -- from the realm of the committee of</b></p> <p>5 <b>going through to get to the point. We were more</b></p> <p>6 <b>worried about getting to the point. What's it</b></p> <p>7 <b>going to look like when you get there.</b></p> <p>8 <b>Q Did you understand house averaging to</b></p> <p>9 <b>be what you have referred to I think repeatedly</b></p> <p>10 <b>in your deposition as an implementation issue as</b></p> <p>11 <b>opposed to an animal welfare issue?</b></p> <p>12 <b>A Absolutely.</b></p> <p>13 <b>MR. SCHIRMER: Object to form.</b></p> <p>14 <b>A Absolutely. We -- if there had been</b></p> <p>15 <b>animal welfare issues that had been really --</b></p> <p>16 <b>that -- if there had been animal welfare issues</b></p> <p>17 <b>from some of the key committee members like Joy</b></p> <p>18 <b>Mench or Ruth Newberry or others, I would recall</b></p> <p>19 <b>those discussions. That's why I don't -- the</b></p> <p>20 <b>reason I don't recall it is that it is an</b></p> <p>21 <b>implementation issue, and it's noise in getting</b></p> <p>22 <b>to full implementation of the guidelines.</b></p>
<p style="text-align: right;">131</p> <p>1 averaging as it's used in the guidelines? And if</p> <p>2 it helps, I'd direct your attention to the last</p> <p>3 paragraph in this Time Period for Implementations</p> <p>4 section where the term is used.</p> <p>5 <b>A The way I understand it, it was allowed</b></p> <p>6 <b>for producers to use old facilities. That was</b></p> <p>7 <b>my -- that was my understanding.</b></p> <p>8 <b>Q Was the scientific --</b></p> <p>9 <b>Was house averaging a concept that was</b></p> <p>10 <b>recommended by the scientific advisory committee</b></p> <p>11 <b>in September of 2000?</b></p> <p>12 <b>MR. SCHIRMER: Object to form.</b></p> <p>13 <b>A I don't recall a great deal of</b></p> <p>14 <b>discussion about house average. I don't recall</b></p> <p>15 <b>it being controversial, that's why I'm having</b></p> <p>16 <b>trouble going beyond what's written right here.</b></p> <p>17 <b>It was nowhere near the same level as</b></p> <p>18 <b>backfilling, for example. But I think the</b></p> <p>19 <b>committee understood that we were dealing with</b></p> <p>20 <b>old facilities. And old facilities that would</b></p> <p>21 <b>make it difficult to deal with ammonia, would</b></p> <p>22 <b>make it difficult to deal with other things, and</b></p>	<p style="text-align: right;">133</p> <p>1 <b>Q Have you used the term "level playing</b></p> <p>2 <b>field" in connection with the UEP guidelines or</b></p> <p>3 <b>your discussion of them?</b></p> <p>4 <b>MR. SCHIRMER: Object to form.</b></p> <p>5 <b>A I have used the term "level playing</b></p> <p>6 <b>field" in speeches and comments that I've made in</b></p> <p>7 <b>a variety of settings, primarily but not</b></p> <p>8 <b>exclusively outside the committee realm. I'm</b></p> <p>9 <b>sure I discussed it with the committee, but I've</b></p> <p>10 <b>been saying that for years, that animal welfare</b></p> <p>11 <b>is akin to food safety. Companies shouldn't</b></p> <p>12 <b>compete on food safety. My food is safer than</b></p> <p>13 <b>yours. My water is safer than your water. My</b></p> <p>14 <b>animals are -- you treat yours inhumane and I</b></p> <p>15 <b>don't? And again, that's what I'm talking about.</b></p> <p>16 <b>What's a humane level?</b></p> <p>17 <b>It's not whether they have perches,</b></p> <p>18 <b>whether they have 500 feet to wander around.</b></p> <p>19 <b>It's that minimum level of animal welfare should</b></p> <p>20 <b>be on an equivalent level as food safety, and</b></p> <p>21 <b>there should be a level playing field.</b></p> <p>22 <b>Q And what's the basis for that belief?</b></p>

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<p style="text-align: right;">134</p> <p>1 MR. SCHIRMER: Object to form.</p> <p>2 <b>A</b> My basis for the belief there is the</p> <p>3 simple scientific basis for a minimum level of</p> <p>4 guidelines. It's very clear after the thorough</p> <p>5 review that was established very early on in</p> <p>6 2000. The core guidelines did not change very</p> <p>7 much after 2000 when we first established them</p> <p>8 because there were years of literature and</p> <p>9 studies that had been done looking at different</p> <p>10 production systems and whether this was good for</p> <p>11 many, many reasons. But all those studies always</p> <p>12 measured mortality and they always measured</p> <p>13 per-hen productivity. So we had years of data,</p> <p>14 and it was really clear that giving birds space</p> <p>15 up around 67 would enhance animal welfare. In</p> <p>16 fact, it was even clear that giving them a</p> <p>17 hundred or more would be negative because more</p> <p>18 space, mortality actually goes up.</p> <p>19 That's what multiple studies said. Not</p> <p>20 one study, not two studies, multiple studies.</p> <p>21 So the committee felt very comfortable</p> <p>22 that we have established a minimum level of</p>	<p style="text-align: right;">136</p> <p>1 MR. SCHIRMER: Object to form.</p> <p>2 <b>A</b> The UEP certified committee was</p> <p>3 developed by the producers, by UEP, working with</p> <p>4 USDA, AMS, Validus. I don't recall if any of the</p> <p>5 individual members -- I'm thinking that some may</p> <p>6 have been involved just to review an audit. I</p> <p>7 can't recall. But we -- our main role was to</p> <p>8 provide the science-based guidelines. We were</p> <p>9 given reports on what was going on and our role</p> <p>10 and my role was, as liaison, was to make sure</p> <p>11 that the producer document was consistent with</p> <p>12 what we were doing from the macro level; that are</p> <p>13 the guidelines being held true? Are they true?</p> <p>14 Are they following the guidelines?</p> <p>15 So the details, I just don't recall.</p> <p>16 But we -- we did not spend a lot of time on the</p> <p>17 UEP program. We spent our time on the</p> <p>18 science-based guidelines.</p> <p>19 Q Did the scientific advisory committee</p> <p>20 have a view on the need for an audit?</p> <p>21 MR. SCHIRMER: Object to form.</p> <p>22 <b>A</b> I don't know whether we ever took any</p>
<p style="text-align: right;">135</p> <p>1 animal welfare, a humane level. If you go below</p> <p>2 it, the birds are being treated inhumanely, and,</p> <p>3 in my opinion and I think the committee's</p> <p>4 opinion, they have an unfair economic advantage</p> <p>5 because they're skirting the guidelines.</p> <p>6 Now, there are no federal laws, there's</p> <p>7 nothing to prevent them. The only thing that can</p> <p>8 drive those guidelines are a voluntary program,</p> <p>9 or companies like McDonald's saying you will put</p> <p>10 your birds at, their case, 72 square inches, you</p> <p>11 will not molt, and they could be very direct</p> <p>12 because they weren't dealing with 98 percent of</p> <p>13 the birds, they were dealing with just a few</p> <p>14 percentage points of the birds.</p> <p>15 There's really no equivocation in the</p> <p>16 committee on those points.</p> <p>17 Q Could you turn to page 24 of the</p> <p>18 guidelines. And I'd like to direct your</p> <p>19 attention to the audit section.</p> <p>20 Was the scientific advisory committee</p> <p>21 involved in developing the audit procedures for</p> <p>22 the UEP certified program?</p>	<p style="text-align: right;">137</p> <p>1 actual votes on that topic. But you have to</p> <p>2 realize that the dream team that we put together,</p> <p>3 and even with the replacements, these are folks</p> <p>4 that are on numerous advisory boards, and I</p> <p>5 couldn't begin to tell you whether Janice Swanson</p> <p>6 or Joy Mench or Ruth Newberry or any of those</p> <p>7 other folks, if they worked with USDA, AMS, or</p> <p>8 Validus. They worked with my other groups, they</p> <p>9 worked with Burger King, McDonald's.</p> <p>10 There are not a tremendous number of</p> <p>11 ethologists in the United States. It's a growing</p> <p>12 science. It's much more -- it's younger science,</p> <p>13 if you will.</p> <p>14 So these folks would say individually</p> <p>15 audits are absolutely required. That's what they</p> <p>16 would say individually. But as a committee we</p> <p>17 didn't vote, we didn't talk about that. We're</p> <p>18 very pleased. And we are -- we just -- I just</p> <p>19 don't recall the details of how much we, you</p> <p>20 know, spent time on it but it wasn't significant</p> <p>21 compared to the science.</p> <p>22 Q Did you believe that an audit was</p>

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<p style="text-align: right;">138</p> <p>1 needed?</p> <p>2 MR. SCHIRMER: Object to form.</p> <p>3 <b>A Absolutely. I personally believe an</b></p> <p>4 <b>audit is needed. Any -- any type of guidelines</b></p> <p>5 <b>need an audit.</b></p> <p>6 Q Why is that?</p> <p>7 <b>A Because people will cheat. They will</b></p> <p>8 <b>ignore them. It's true, it's human behavior.</b></p> <p>9 <b>And here's the most important reason, is people</b></p> <p>10 <b>that really care about animal welfare and they're</b></p> <p>11 <b>buying eggs, like McDonald's and others, they're</b></p> <p>12 <b>going to require it. Now in this case McDonald's</b></p> <p>13 <b>has their own system, but they audit everything.</b></p> <p>14 <b>It's good supply chain management.</b></p> <p>15 I mean it's almost a given that the</p> <p>16 audit was required. It's good supply chain</p> <p>17 practice.</p> <p>18 Q Do you have an understanding that the</p> <p>19 failure to meet the space allowance requirements</p> <p>20 of the guidelines would cause an audit failure?</p> <p>21 <b>A Absolutely.</b></p> <p>22 Q And do you have an understanding as to</p>	<p style="text-align: right;">140</p> <p>1 failure under the UEP-certified program?</p> <p>2 <b>A Yes, as I understand it. And it's --</b></p> <p>3 <b>in this document, I think on page 13, it's</b></p> <p>4 <b>prohibited. So if something's prohibited and you</b></p> <p>5 <b>do it, you fail the audit. That's my</b></p> <p>6 <b>understanding.</b></p> <p>7 Q I'd like to turn your attention to page</p> <p>8 8 and 9. Actually 8 through 10 of the guidelines</p> <p>9 to the section that's entitled Euthanasia and</p> <p>10 On-Farm Depopulation of Entire Flocks.</p> <p>11 Dr. Armstrong, are you familiar with</p> <p>12 this section of the guideline?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And is this -- does this section of the</p> <p>15 UEP-certified guidelines represent the</p> <p>16 recommendations of the scientific advisory</p> <p>17 committee?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And can you explain to me the</p> <p>20 scientific advisory committee's view on</p> <p>21 euthanasia and on-farm depopulation?</p> <p>22 MR. SCHIRMER: Object to form.</p>
<p style="text-align: right;">139</p> <p>1 why the failure to meet the space allowance</p> <p>2 guidelines is a cause for audit failure?</p> <p>3 MR. SCHIRMER: Object to form.</p> <p>4 <b>A Because the space allowance for the</b></p> <p>5 <b>birds, that was one of the -- one of the</b></p> <p>6 <b>fundamental aspects of establishing humane</b></p> <p>7 <b>guidelines for laying hens, that 67 to 86 square</b></p> <p>8 <b>inch per bird range was carefully thought out.</b></p> <p>9 <b>In fact, our first recommendation, which only</b></p> <p>10 <b>lasted a meeting or so, was 72. That's why</b></p> <p>11 <b>you'll see McDonald's program at 72, because that</b></p> <p>12 <b>was the number we produced first.</b></p> <p>13 <b>After interaction with the industry,</b></p> <p>14 <b>additional consideration, we have a wide range of</b></p> <p>15 <b>birds and sizes, so we went to a range of 67 to</b></p> <p>16 <b>86, which in effect made the minimum 67. That's</b></p> <p>17 <b>a fundamental aspect of what we're -- what we</b></p> <p>18 <b>were about, the space allowance per bird. That</b></p> <p>19 <b>was -- without that and -- without meeting that,</b></p> <p>20 <b>there's no basis for humane guidelines.</b></p> <p>21 Q Do you have an understanding that</p> <p>22 evidence of backfilling is a cause for audit</p>	<p style="text-align: right;">141</p> <p>1 <b>A Like many topics, we had one person who</b></p> <p>2 <b>was the sort of resident expert, and that was</b></p> <p>3 <b>Ruth Newberry. And we recognized as a committee</b></p> <p>4 <b>that on-farm euthanasia is essential and</b></p> <p>5 <b>required. The practical nature of laying hen</b></p> <p>6 <b>production, it's not economically feasible to</b></p> <p>7 <b>even think about a veterinarian to visit your</b></p> <p>8 <b>farm and euthanize a bird. It's just not</b></p> <p>9 <b>practical. So the ability to do that in an</b></p> <p>10 <b>approved manner is very important. Doing it</b></p> <p>11 <b>wrong is a very, very big welfare issue.</b></p> <p>12 Q And is it the committee's view that --</p> <p>13 well, strike that.</p> <p>14 Do you believe that the scientific</p> <p>15 advisory committee's recommendations on</p> <p>16 euthanasia and flock depopulation are consistent</p> <p>17 with animal welfare?</p> <p>18 <b>A Yes.</b></p> <p>19 Q You've referred multiple times today to</p> <p>20 the idea that the scientific advisory committee's</p> <p>21 guidelines set the baseline for humane animal</p> <p>22 care; correct?</p>



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<p style="text-align: right;">142</p> <p>1 <b>A Yes.</b></p> <p>2 Q Is any animal welfare program perfect?</p> <p>3 <b>A No.</b></p> <p>4 Q Why not?</p> <p>5 <b>A Because we only know what we know at</b></p> <p>6 <b>the time, and we build the recommendations based</b></p> <p>7 <b>on the existing science. And we're constantly</b></p> <p>8 <b>learning, the birds are constantly changing, and</b></p> <p>9 <b>then the external influences are constantly</b></p> <p>10 <b>changing.</b></p> <p>11 Q Can any animal welfare program</p> <p>12 completely eliminate mortality in a flock?</p> <p>13 <b>A No.</b></p> <p>14 Q What about cannibalism? Can any animal</p> <p>15 welfare program completely eliminate cannibalism</p> <p>16 among birds?</p> <p>17 <b>A No.</b></p> <p>18 Q And is cannibalism specific to hens in</p> <p>19 caged systems?</p> <p>20 <b>A No.</b></p> <p>21 Q Is it incident -- is its incidence</p> <p>22 higher or lower in caged systems as compared to</p>	<p style="text-align: right;">144</p> <p>1 <b>A Could you repeat that?</b></p> <p>2 Q Yeah. Are you familiar with the term</p> <p>3 "hundred percent rule" as it relates to the UEP</p> <p>4 certified program?</p> <p>5 MR. SCHIRMER: Object to form.</p> <p>6 <b>A I need additional information.</b></p> <p>7 Q Okay. Why don't we turn to page 26 of</p> <p>8 the guidelines.</p> <p>9 <b>A Oh, yes, I am -- I am very conversant</b></p> <p>10 <b>with this -- this concept.</b></p> <p>11 Q Okay. And what is your understanding</p> <p>12 of this concept?</p> <p>13 <b>A So, really originated with the</b></p> <p>14 <b>committee discussions and also having a knowledge</b></p> <p>15 <b>of what's -- what was going on in the industry.</b></p> <p>16 <b>And it's consistent again with the concept that</b></p> <p>17 <b>our guidelines are minimum guidelines for humane</b></p> <p>18 <b>production.</b></p> <p>19 <b>So based on that and our role as a</b></p> <p>20 <b>committee focused on animal welfare, we saw no</b></p> <p>21 <b>reason why a producer, let alone a producer in a</b></p> <p>22 <b>voluntary certified program, would have some</b></p>
<p style="text-align: right;">143</p> <p>1 other production systems?</p> <p>2 MR. SCHIRMER: Object to form.</p> <p>3 <b>A The scientific research and the</b></p> <p>4 <b>practical knowledge from Europe and the United</b></p> <p>5 <b>States would clearly indicate that mortality is</b></p> <p>6 <b>higher in non-caged systems than caged systems.</b></p> <p>7 Q What about vermin?</p> <p>8 <b>A Non --</b></p> <p>9 MR. SCHIRMER: Object to form.</p> <p>10 <b>A Unconfined systems are subject to</b></p> <p>11 <b>preditation -- predation.</b></p> <p>12 Q And can any animal welfare program</p> <p>13 eliminate vermin that are found on farms?</p> <p>14 MR. SCHIRMER: Object to form.</p> <p>15 <b>A A well-managed, confined system can</b></p> <p>16 <b>eliminate vermin if -- if properly managed.</b></p> <p>17 Q What about a non-caged system?</p> <p>18 MR. SCHIRMER: Object to form.</p> <p>19 <b>A It's nearly impossible.</b></p> <p>20 Q Are you familiar with the term "hundred</p> <p>21 percent rule" as it relates to the animal well --</p> <p>22 UEP --</p>	<p style="text-align: right;">145</p> <p>1 <b>birds treated humanely and other birds treated</b></p> <p>2 <b>inhumanely. That's not supported by the view</b></p> <p>3 <b>that we believe in a humane minimum level of</b></p> <p>4 <b>production -- or husbandry.</b></p> <p>5 Q So on page 26, I'd like to direct your</p> <p>6 attention to -- this is the section entitled</p> <p>7 Additional Requirements for United Egg Producer</p> <p>8 Certified Companies. And No. 1 under this</p> <p>9 section reads "A UEP Certified company must</p> <p>10 implement the animal husbandry guidelines on a</p> <p>11 hundred percent of the company-owned contract or</p> <p>12 affiliate (site or location) regardless of where</p> <p>13 or how eggs may be marketed."</p> <p>14 Do you see that?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And did the scientific advisory</p> <p>17 committee have a position --</p> <p>18 <b>A Yes.</b></p> <p>19 Q -- on that statement?</p> <p>20 <b>A They had a position on that concept</b></p> <p>21 <b>and, in essence, that statement, yes.</b></p> <p>22 Q Okay. And what was that position?</p>

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38 (Pages 146 to 149)

<p style="text-align: right;">146</p> <p>1       <b>A</b> It would support that concept in that</p> <p>2       the committee would never condone or support</p> <p>3       birds being housed and treated in a manner below</p> <p>4       the minimum guidelines that we set. We don't</p> <p>5       have control over that, but we would never accept</p> <p>6       it, and we would never advise UEP to go anywhere</p> <p>7       other than a hundred percent rule.</p> <p>8       <b>Q</b> Was that position unanimous among the</p> <p>9       committee members?</p> <p>10       <b>MR. SCHIRMER:</b> Object to form.</p> <p>11       <b>A</b> I think -- I don't recall whether Don</p> <p>12       Bell was -- I don't recall all the detailed</p> <p>13       discussions of whether we -- whether we were</p> <p>14       unanimous, and specifically I'm thinking of Don</p> <p>15       Bell, but the committee was very much to</p> <p>16       consensus. That's a detail I can't pull out.</p> <p>17       (Deposition Exhibit 12 was marked for</p> <p>18       identification.)</p> <p>19       <b>MS. SUMNER:</b> Marked as Armstrong 12 a</p> <p>20       document that bears the Bates No. UE0213960</p> <p>21       through 63. This is a copy of the United Voices</p> <p>22       newsletter dated May 25th, 2005.</p>	<p style="text-align: right;">148</p> <p>1       conditions and others in less-than-ideal</p> <p>2       conditions? Animal welfare is a public issue</p> <p>3       that is growing in importance each day. In this</p> <p>4       context, how is it possible to justify selling</p> <p>5       eggs that are produced under less-than-optimal</p> <p>6       conditions for hen welfare? This is not about</p> <p>7       niche markets. This is about an industry</p> <p>8       establishing a set of guidelines for the humane</p> <p>9       treatment of hens. Failure to follow scientific</p> <p>10       guidelines that are designed to ensure animal</p> <p>11       welfare will leave not only producers, but the</p> <p>12       entire industry extremely vulnerable to</p> <p>13       criticism. This is a quick way to the end of</p> <p>14       cage-produced eggs."</p> <p>15       So this is -- my memory is more clear</p> <p>16       from this. Apparently the committee fully</p> <p>17       endorsed this because they reviewed it.</p> <p>18       <b>Q</b> Is this an accurate reflection of your</p> <p>19       views?</p> <p>20       <b>A</b> Yes.</p> <p>21       <b>Q</b> And also --</p> <p>22       <b>A</b> It's a great capture of several of the</p>
<p style="text-align: right;">147</p> <p>1       <b>Q</b> Dr. Armstrong, I'd like to direct your</p> <p>2       attention to pages 2 and 3 of this document,</p> <p>3       specifically to the article entitled Egg Industry</p> <p>4       Needs to Be United on Animal Welfare, Editorial</p> <p>5       by Dr. Jeff Armstrong and Scientific Advisory</p> <p>6       Committee. Could you please just take a minute</p> <p>7       to review --</p> <p>8       <b>A</b> I have.</p> <p>9       <b>Q</b> -- that article. And do you recall</p> <p>10       this editorial?</p> <p>11       <b>A</b> Yes.</p> <p>12       <b>Q</b> Did you write this?</p> <p>13       <b>A</b> Yes.</p> <p>14       <b>Q</b> And what's the subject of this?</p> <p>15       <b>A</b> I wrote this, and it --</p> <p>16       <b>MR. SCHIRMER:</b> Object to form.</p> <p>17       <b>A</b> I wrote this article and it was</p> <p>18       reviewed by the scientific committee and endorsed</p> <p>19       by the scientific committee. The subject of this</p> <p>20       article is, basically, if you look at the second</p> <p>21       paragraph, middle of it, "How can you justify</p> <p>22       keeping (owning) some hens under humane</p>	<p style="text-align: right;">149</p> <p>1       things I've stated today.</p> <p>2       <b>Q</b> And also of the views of the scientific</p> <p>3       advisory committee?</p> <p>4       <b>A</b> Yes.</p> <p>5       <b>MR. SCHIRMER:</b> Object to form.</p> <p>6       <b>A</b> They were involved in editing and</p> <p>7       reviewing this document. It was a regular</p> <p>8       practice for me. Anything that I produced that</p> <p>9       had "and scientific advisory committee" or their</p> <p>10       names with it, that they would review it.</p> <p>11       Sometimes it took weeks.</p> <p>12       <b>Q</b> What was the problem, or issue I should</p> <p>13       say, from an animal welfare perspective with a</p> <p>14       program that lacks a hundred percent rule or</p> <p>15       equivalent concept?</p> <p>16       <b>MR. SCHIRMER:</b> Object to form.</p> <p>17       <b>A</b> The problem with an individual producer</p> <p>18       who is going to be in a voluntary program, is</p> <p>19       that -- is that they are housing birds in</p> <p>20       inhumane conditions. It's very simple.</p> <p>21       And that's not an ethical -- that is a</p> <p>22       science-based set of guidelines that we produced</p>

## HIGHLY CONFIDENTIAL

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39 (Pages 150 to 153)

<p style="text-align: right;">150</p> <p>1 Q I'd like to direct your attention to</p> <p>2 the first paragraph of this editorial. The last</p> <p>3 sentence states, "An industry-wide set of</p> <p>4 guidelines should be just that, industry-wide."</p> <p>5 A Mm-hmm.</p> <p>6 Q Do you see that sentence?</p> <p>7 A Mm-hmm.</p> <p>8 Q And did you write that sentence?</p> <p>9 A Yes.</p> <p>10 Q Okay. And what did you mean when you</p> <p>11 wrote that sentence?</p> <p>12 A At that time, I think you'll see in the</p> <p>13 first sentence of the second paragraph, a group</p> <p>14 of producers were considering the establishment</p> <p>15 of a separate program that would allow it to be</p> <p>16 consumer driven. And we were voicing our opinion</p> <p>17 on that topic as well as just the general rule</p> <p>18 that a UEP program should be a hundred percent.</p> <p>19 Q And why were you of that opinion, that</p> <p>20 it should be a hundred percent or should be</p> <p>21 industry-wide?</p> <p>22 MR. SCHIRMER: Object to form.</p>	<p style="text-align: right;">152</p> <p>1 market, not mine are more welfare friendly than</p> <p>2 yours, but a minimum level. And it's a zero or a</p> <p>3 1. It's humane or it's inhumane in the</p> <p>4 committee's perspective.</p> <p>5 Q I'd like to direct your attention to</p> <p>6 the second-to-the-last paragraph of this</p> <p>7 editorial which is on page 3. It begins, "It is</p> <p>8 not our intent to suggest that all producers</p> <p>9 should be part of the ACC program. However, we</p> <p>10 do believe all eggs should be produced in a</p> <p>11 humane manner consistent with our guidelines.</p> <p>12 Currently the ACC provides a very effective and</p> <p>13 efficient means to assure customers that the</p> <p>14 guidelines are being followed."</p> <p>15 Do you see that?</p> <p>16 A Mm-hmm.</p> <p>17 Q And is that an accurate representation</p> <p>18 of the committee's position at the time this</p> <p>19 editorial was written?</p> <p>20 A Yes.</p> <p>21 MR. SCHIRMER: Object to form.</p> <p>22 A Yes. And I would accentuate the second</p>
<p style="text-align: right;">151</p> <p>1 A It goes back to the core belief, the</p> <p>2 core understanding of the committee, that we were</p> <p>3 establishing the minimum guidelines for humane</p> <p>4 treatment of laying hens in cages. And if the</p> <p>5 industry wanted to follow our advice, we're</p> <p>6 giving it. That's -- that was our view. And it</p> <p>7 really gets to the core point that we did not</p> <p>8 want to see hens housed at less than 67 square</p> <p>9 inches or in houses with high ammonia or many of</p> <p>10 the other noncompliance points.</p> <p>11 Q Were practices that the scientific</p> <p>12 advisory committee considered to be inhumane</p> <p>13 unacceptable to the committee?</p> <p>14 MR. SCHIRMER: Object to form.</p> <p>15 A Absolutely. We found the current --</p> <p>16 when we toured the industry and reviewed the</p> <p>17 current status of the industry in 1998, we found</p> <p>18 it to be unacceptable based on a review of best</p> <p>19 practices -- practices grounded on science.</p> <p>20 Therefore, we developed a set of guidelines that</p> <p>21 would allow them to move to a science-based set</p> <p>22 of guidelines with a minimum level. Not a niche</p>	<p style="text-align: right;">153</p> <p>1 sentence. "We do believe all eggs should be</p> <p>2 produced in a humane manner consistent with our</p> <p>3 guidelines."</p> <p>4 Another entire area of egg production</p> <p>5 that was under our concern but we had little</p> <p>6 opportunity to affect is the entire fluid or</p> <p>7 breaker market. There are still millions of</p> <p>8 birds that are housed in guidelines that are</p> <p>9 below standard, but the industry still does that.</p> <p>10 We don't control that. All we can do is</p> <p>11 recommend and hope that federal law or consumer</p> <p>12 retail will change those practices in the future.</p> <p>13 In this case, we're providing advice to</p> <p>14 an entity that asked us to provide advice, UEP.</p> <p>15 And that's what we did.</p> <p>16 Q Last sentence of this editorial reads,</p> <p>17 "Developing a separate program that permits eggs</p> <p>18 to be produced under conditions that do not meet</p> <p>19 the humane standards found in the UEP guidelines</p> <p>20 is a huge mistake for the egg industry and one</p> <p>21 that could have repercussions for all of animal</p> <p>22 agriculture."</p>



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40 (Pages 154 to 157)

<p style="text-align: right;">154</p> <p>1 Did you write that sentence?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Okay. And what did you mean when you</p> <p>4 wrote that sentence?</p> <p>5 <b>A Exactly what it says. I cannot</b></p> <p>6 <b>accentuate it any better than -- than exactly</b></p> <p>7 <b>what that says. Developing a separate program</b></p> <p>8 <b>that permits eggs to be produced under conditions</b></p> <p>9 <b>that do not meet the humane standards found in</b></p> <p>10 <b>the UEP guidelines is a huge mistake for the egg</b></p> <p>11 <b>industry and one that could have repercussions</b></p> <p>12 <b>for all of animal agriculture.</b></p> <p>13 Q Why was it a huge mistake in your view?</p> <p>14 <b>A Because if you are --</b></p> <p>15 <b>MR. SCHIRMER: Object to form.</b></p> <p>16 <b>A -- if you are saying that you have</b></p> <p>17 <b>science-based guidelines, and you're not</b></p> <p>18 <b>following science, that's false. That's a huge</b></p> <p>19 <b>mistake. You will lose the trust of retailers</b></p> <p>20 <b>and consumers that value science-based</b></p> <p>21 <b>guidelines. And, again, my parallel to food</b></p> <p>22 <b>safety, you know, is it humane or not?</b></p>	<p style="text-align: right;">156</p> <p>1 Q Okay. And did you have an</p> <p>2 understanding as to why Cargill was interested in</p> <p>3 animal welfare?</p> <p>4 <b>A Cargill and McDonald's both had --</b></p> <p>5 <b>well, since I became familiar with McDonald's and</b></p> <p>6 <b>Cargill, it's hard to separate the two. It's</b></p> <p>7 <b>part of their value system. They believe in food</b></p> <p>8 <b>safety, they believe in humane treatment of</b></p> <p>9 <b>animals. It's part of their corporate social</b></p> <p>10 <b>responsibility principles. That's true for both</b></p> <p>11 <b>companies.</b></p> <p>12 <b>(Deposition Exhibit 13 was marked for</b></p> <p>13 <b>identification.)</b></p> <p>14 <b>MS. SUMNER: For the record, I've</b></p> <p>15 <b>marked as Armstrong 13 a confidential document</b></p> <p>16 <b>that bears the Bates Nos. UE0366667 through 668.</b></p> <p>17 Q Dr. Armstrong, do you recognize this</p> <p>18 document?</p> <p>19 <b>A Yes, I do recognize the document.</b></p> <p>20 Q And what is this document?</p> <p>21 <b>A This is a letter that we sent to Gene</b></p> <p>22 <b>Gregory, and we wanted to clearly send a message</b></p>
<p style="text-align: right;">155</p> <p>1 <b>And the egg industry, by and large the</b></p> <p>2 <b>UEP, they've accepted the science and moved to a</b></p> <p>3 <b>humane level.</b></p> <p>4 Q What were the repercussions for animal</p> <p>5 agriculture that you were concerned about?</p> <p>6 <b>A It's just a spreading of the same</b></p> <p>7 <b>concept that if one group doesn't trust one</b></p> <p>8 <b>section of animal agriculture, then that mistrust</b></p> <p>9 <b>spreads to all. All get labeled.</b></p> <p>10 Q Going back to your work as an adviser</p> <p>11 for Cargill for a moment.</p> <p>12 <b>A Yes.</b></p> <p>13 Q Did you have an understanding as to why</p> <p>14 Cargill -- well, what is Cargill?</p> <p>15 <b>A Cargill is a -- is a very large company</b></p> <p>16 <b>that -- many, many facets. The particular aspect</b></p> <p>17 <b>of Cargill that I worked with was at that time</b></p> <p>18 <b>called Cargill Sunny Fresh, and they were the --</b></p> <p>19 <b>they're connected but separate with McDonald's.</b></p> <p>20 <b>So it's Cargill/McDonald's. It's hard to</b></p> <p>21 <b>separate. It has to do with their -- their egg</b></p> <p>22 <b>production.</b></p>	<p style="text-align: right;">157</p> <p>1 <b>to the industry stressing the point in page 2.</b></p> <p>2 <b>And if you look at the first full paragraph, I'd</b></p> <p>3 <b>given the background, "Our group of scientists is</b></p> <p>4 <b>first and foremost concerned with the welfare of</b></p> <p>5 <b>laying hens. We have consistently maintained our</b></p> <p>6 <b>role is to recommend science-based animal care</b></p> <p>7 <b>practices to the UEP and not attempt to dictate</b></p> <p>8 <b>timely -- timelines of adoption by the industry.</b></p> <p>9 <b>"It has come to our attention that</b></p> <p>10 <b>individuals within industry are attempting to</b></p> <p>11 <b>develop a program that would use the USDA Process</b></p> <p>12 <b>Verified seal but result in less than one hundred</b></p> <p>13 <b>percent of the hens subject to science-based</b></p> <p>14 <b>guidelines."</b></p> <p>15 <b>And you skip down and it says, "It is</b></p> <p>16 <b>our collective and firm belief that any program</b></p> <p>17 <b>approved by UEP or USDA should require</b></p> <p>18 <b>100 percent implementation. While both seals</b></p> <p>19 <b>represent marketing programs, we believe failure</b></p> <p>20 <b>to ensure 100 percent implementation threatens</b></p> <p>21 <b>the welfare of laying hens and the overall</b></p> <p>22 <b>credibility of our science-based guidelines."</b></p>

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41 (Pages 158 to 161)

<p style="text-align: right;">158</p> <p>1           <b>So I could have gotten to that point</b>  2           <b>quicker, but the two points: Failure to ensure a</b>  3           <b>hundred percent threatens the welfare of laying</b>  4           <b>hens, and the overall credibility of</b>  5           <b>science-based guidelines.</b>  6           Q   In that third-to-the-last paragraph,  7           you read the first sentence. And then it goes on  8           to say, "In other words, a given producer or  9           company would not be required to maintain all  10          hens under science-based guidelines. We are  11          adamantly opposed to this approach."  12          Do you see that?  13          A   <b>Yes.</b>  14          Q   And was that your view at the time you  15          sent this letter to Gene?  16          A   <b>That was not --</b>  17          MR. SCHIRMER: Object to form.  18          A   <b>That sentence and the following</b>  19          <b>sentence, the entire note is not only my view but</b>  20          <b>the committee's view.</b>  21          Q   And why were you and the committee  22          adamantly opposed to this approach where a</p>	<p style="text-align: right;">160</p> <p>1           14 a document that bears the Bates numbers --  2           confidential document that bears the Bates Nos.  3           UE0557576 through 78.  4           Q   Dr. Armstrong, if you could take a  5           moment, please, to review this document and let  6           me know when you've done so.  7           A   <b>Yes. I've reviewed it.</b>  8           Q   Do you recognize this document?  9           A   <b>Yes.</b>  10          Q   Can you tell me what it is?  11          A   <b>It is another one of our notes from the</b>  12          <b>committee, fully endorsed by the committee, to</b>  13          <b>the industry stressing the importance of</b>  14          <b>science-based guidelines, stressing the</b>  15          <b>importance to look at new systems, stressing the</b>  16          <b>importance of additional research. And finally,</b>  17          <b>that we're unanimous in the support of the</b>  18          <b>implementation of science-based animal care</b>  19          <b>guidelines by the industry.</b>  20          Q   And if you look at pages 2 and 3, the  21          document has a date of August 2nd, 2008, at the  22          top.</p>
<p style="text-align: right;">159</p> <p>1           producer or company would not be required to  2           maintain all hens under science-based guidelines?  3           MR. SCHIRMER: Object to form.  4           A   <b>Because hens would be subject to</b>  5           <b>inhumane conditions. Inhumane conditions.</b>  6           Q   And you then went on to write, "We view  7           the UEP guidelines as grounded in sound science  8           that represents the threshold for maintaining  9           caged layers humanely. Housing hens at less than  10          UEP minimum standards is neither scientifically  11          justified nor humane."  12          Did I read that correctly?  13          A   <b>That's absolutely correct.</b>  14          Q   And was that your belief at the time  15          you wrote this letter?  16          A   <b>That was my belief and the full belief</b>  17          <b>of the committee.</b>  18          Q   And is that still your belief today?  19          A   <b>Yes.</b>  20          <b>(Deposition Exhibit 14 was marked for</b>  21          <b>identification.)</b>  22          MS. SUMNER: I've marked as Armstrong</p>	<p style="text-align: right;">161</p> <p>1           A   <b>Yes.</b>  2           Q   Do you see that? Is that at or around  3           the time that this document was written?  4           A   <b>Yes.</b>  5           Q   And did you write this document?  6           A   <b>Yes.</b>  7           Q   Did you consult with the committee in  8           writing the document?  9           A   <b>In great detail.</b>  10          MR. SCHIRMER: Object to form.  11          A   <b>I consulted with the committee, they</b>  12          <b>were actively involved.</b>  13          Q   Did they approve this document?  14          A   <b>100 percent approval by the committee.</b>  15          Q   Does this document accurately -- excuse  16          me -- reflect your views and the views of the  17          committee on the topics that are addressed in the  18          document?  19          A   <b>Yes.</b>  20          MR. SCHIRMER: Object to form.  21          Q   Sitting here today as you reviewed this  22          document, is there anything in this document that</p>

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<p style="text-align: right;">162</p> <p>1 you believe to be inaccurate?</p> <p>2 MR. SCHIRMER: Object to form.</p> <p>3 <b>A No, not based on my quick renewal with</b></p> <p>4 <b>the document. No.</b></p> <p>5 Q If you look at the top of page 3,</p> <p>6 there's a discussion about enriched cages.</p> <p>7 <b>A Yes.</b></p> <p>8 Q Do you see that? What was the</p> <p>9 committee's view on enriched cages at this time?</p> <p>10 <b>A From the very beginning, when we</b></p> <p>11 <b>reviewed types of systems, and even in the</b></p> <p>12 <b>earliest writings from the committee, we stressed</b></p> <p>13 <b>to the industry that modified or enriched cages,</b></p> <p>14 <b>similar terms, are a system that should be</b></p> <p>15 <b>evaluated and carefully looked at, the industry.</b></p> <p>16 <b>As I learned more and more about</b></p> <p>17 <b>enriched cages, toured enriched-cage facilities,</b></p> <p>18 <b>I pushed even harder. Because, again, if you</b></p> <p>19 <b>think about mortality and per-hen egg production</b></p> <p>20 <b>as being the minimum levels of hen welfare, it's</b></p> <p>21 <b>also clear that birds want to perch, they want to</b></p> <p>22 <b>dust bathe, and they like a dark area to lay</b></p>	<p style="text-align: right;">164</p> <p>1 accept this approach."</p> <p>2 Do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q What did you mean?</p> <p>5 <b>A At the time this was written,</b></p> <p>6 <b>August 2nd, 2008, some of the major groups --</b></p> <p>7 <b>I'll name one: HSUS -- were vehemently opposed</b></p> <p>8 <b>to any type of cage. Any type of cage. So that</b></p> <p>9 <b>was a reality at the time. Because there were</b></p> <p>10 <b>significant groups that would never accept any</b></p> <p>11 <b>modifier cage.</b></p> <p>12 <b>But if you look at the science of this</b></p> <p>13 <b>system, and you look at the holistic approach to</b></p> <p>14 <b>sustainability, it's very solid.</b></p> <p>15 <b>Since writing this in 2008, HSUS has</b></p> <p>16 <b>changed their view and they now accept enriched</b></p> <p>17 <b>cages as humane.</b></p> <p>18 <b>I personally think that's where the</b></p> <p>19 <b>industry will go and should go, and I've been</b></p> <p>20 <b>very open about that. Not as representing the</b></p> <p>21 <b>committee's view, but as my own view.</b></p> <p>22 Q Dr. Armstrong, do you understand that</p>
<p style="text-align: right;">163</p> <p>1 <b>their eggs. Three distinct behaviors. And the</b></p> <p>2 <b>enriched cage provides that, but yet keeps</b></p> <p>3 <b>mortality low and per-hen productivity high. So</b></p> <p>4 <b>it's something that the industry should look at,</b></p> <p>5 <b>I think, as soon as possible within the realm of</b></p> <p>6 <b>what's practical.</b></p> <p>7 Q The last sentence -- do you know if the</p> <p>8 industry is looking at --</p> <p>9 <b>A Yes.</b></p> <p>10 Q -- those systems today?</p> <p>11 MR. SCHIRMER: Object to form.</p> <p>12 <b>A Yes. In fact, in my state there's a</b></p> <p>13 <b>very -- very good example of enriched cages. You</b></p> <p>14 <b>can go to a website and watch the birds online,</b></p> <p>15 <b>and it's doing very well. And enriched cages</b></p> <p>16 <b>were mandated by the EU -- or I should say cages</b></p> <p>17 <b>were banned by the EU and enriched cages are</b></p> <p>18 <b>coming into play.</b></p> <p>19 Q The last sentence of this paragraph you</p> <p>20 wrote, "Because of pressure from activists,</p> <p>21 however, a solid science-based assessment may be</p> <p>22 required before retailers and consumers will</p>	<p style="text-align: right;">165</p> <p>1 United Egg Producers and several of UEP's members</p> <p>2 have been sued for alleged antitrust violations</p> <p>3 that are in part based on allegations relating to</p> <p>4 the UEP certified program?</p> <p>5 MR. SCHIRMER: Object to form.</p> <p>6 <b>A I am aware.</b></p> <p>7 Q Are you familiar generally with the</p> <p>8 allegations about the UEP certified program that</p> <p>9 are being made in those lawsuits?</p> <p>10 <b>A I am not --</b></p> <p>11 MR. SCHIRMER: Object to form.</p> <p>12 <b>A I am not aware of the specific details,</b></p> <p>13 <b>just that -- just the overarching view.</b></p> <p>14 Q Okay. And what is the -- what is the</p> <p>15 overarching view that you are aware of?</p> <p>16 MR. SCHIRMER: Object to form.</p> <p>17 <b>A My assumption is that the complaint is</b></p> <p>18 <b>that this welfare program was not a welfare</b></p> <p>19 <b>program but was used to alter the price or</b></p> <p>20 <b>supply. And I really don't know much more than</b></p> <p>21 <b>that.</b></p> <p>22 Q Okay. And what is your reaction to</p>

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<p style="text-align: right;">166</p> <p>1 those allegations?</p> <p>2 MR. SCHIRMER: Object to form.</p> <p>3 <b>A My response is, from the beginning, our</b></p> <p>4 <b>scientific advisory board first and foremost</b></p> <p>5 <b>established minimum humane guidelines for caged</b></p> <p>6 <b>animal production. Later we expanded that to</b></p> <p>7 <b>other forms.</b></p> <p>8 <b>Our committee would be -- if there were</b></p> <p>9 <b>any indication that our committee was involved in</b></p> <p>10 <b>something other than the science, they would be</b></p> <p>11 <b>profoundly upset and disappointed, because we</b></p> <p>12 <b>always focused on, first and foremost, the</b></p> <p>13 <b>welfare of laying hens.</b></p> <p>14 <b>Moreover, as you can see in the</b></p> <p>15 <b>writings that I have produced and the view of the</b></p> <p>16 <b>committee, we view the process that we went</b></p> <p>17 <b>through and the resulting guidelines as an</b></p> <p>18 <b>example for the rest of animal agriculture to</b></p> <p>19 <b>follow.</b></p> <p>20 <b>This is a -- we're all -- we all view</b></p> <p>21 <b>our role in this committee as something that is</b></p> <p>22 <b>quite profound and had monumental impact in not</b></p>	<p style="text-align: right;">168</p> <p>1 <b>A Never.</b></p> <p>2 MS. SUMNER: Can we take a short break.</p> <p>3 THE VIDEOGRAPHER: We are going off the</p> <p>4 record. The time is 12:01 p.m.</p> <p>5 (A recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back. This</p> <p>7 is the beginning of Tape 4. The time is</p> <p>8 12:45 p.m., and we are back on the record.</p> <p>9 MS. SUMNER: Dr. Armstrong, thank you</p> <p>10 for your time this morning.</p> <p>11 At this point I have no further</p> <p>12 questions for Dr. Armstrong. We do, however,</p> <p>13 want to reserve adequate time to conduct a</p> <p>14 redirect examination which will be dependent</p> <p>15 obviously on, you know, the course of questioning</p> <p>16 this afternoon. We'd like to reserve up to an</p> <p>17 hour to do that since we really did not use</p> <p>18 nearly our time this morning. But at this point</p> <p>19 we're happy to turn -- turn over the deposition</p> <p>20 to the plaintiffs.</p> <p>21 MR. OLSON: Okay. Well, we can see how</p> <p>22 the timing works out and address that later.</p>
<p style="text-align: right;">167</p> <p>1 <b>only egg production, but in animal agriculture.</b></p> <p>2 <b>That's clearly the view of the committee. We've</b></p> <p>3 <b>been together a long time.</b></p> <p>4 <b>We're quite proud of this</b></p> <p>5 <b>accomplishment from a professional perspective</b></p> <p>6 <b>because we put science-based guidelines into</b></p> <p>7 <b>play, and we're also -- I have also said</b></p> <p>8 <b>repeatedly to numerous audiences that I believe</b></p> <p>9 <b>the egg producers, the United Egg Producers, are</b></p> <p>10 <b>one of the, if not the, most proactive and</b></p> <p>11 <b>forward-thinking groups with regard to animal</b></p> <p>12 <b>welfare in the United States.</b></p> <p>13 Q Did you ever understand the development</p> <p>14 of the UEP certified program to be part of a</p> <p>15 supply restriction conspiracy among egg</p> <p>16 producers?</p> <p>17 <b>A No.</b></p> <p>18 MR. SCHIRMER: Object to form.</p> <p>19 <b>A No.</b></p> <p>20 Q Do you ever hear anyone talk about the</p> <p>21 program in those terms?</p> <p>22 MR. SCHIRMER: Object to form.</p>	<p style="text-align: right;">169</p> <p>1 CROSS-EXAMINATION,</p> <p>2 QUESTIONS BY STEIG D. OLSON:</p> <p>3 Q So, good afternoon, Dr. Armstrong. I'm</p> <p>4 Steig Olson. I am an attorney for the direct</p> <p>5 purchaser class plaintiffs in the federal case,</p> <p>6 and I'm going to ask you a few questions today.</p> <p>7 I'm going to do my best to ask clear questions,</p> <p>8 but if at any time you find anything about the</p> <p>9 question unclear, just ask me to stop and ask for</p> <p>10 clarification.</p> <p>11 <b>A Thank you.</b></p> <p>12 Q And if you answer a question, I'll</p> <p>13 assume you understood it; is that fair?</p> <p>14 <b>A Yes.</b></p> <p>15 Q At the very beginning of the day you</p> <p>16 discussed your professional work in the area of</p> <p>17 social responsibility with regard to food</p> <p>18 systems. Do you recall that?</p> <p>19 <b>A Yes.</b></p> <p>20 Q With regard to the social</p> <p>21 responsibility of food producers, is part of that</p> <p>22 social responsibility being truthful and</p>

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<p style="text-align: right;">170</p> <p>1 forthright about production practices?</p> <p>2 <b>A Yes.</b></p> <p>3 Q So I'd like to go back to the beginning</p> <p>4 of your work for the UEP scientific advisory</p> <p>5 committee. And to do so, let me hand you a</p> <p>6 document that we'll mark today Armstrong 15.</p> <p>7 This was previously used as Gene Gregory 6,</p> <p>8 Donald Bell 3. It is UE0064537. And it's a</p> <p>9 United Voices from February 22nd, 1999.</p> <p>10 (Deposition Exhibit 15 was marked for</p> <p>11 identification.)</p> <p>12 Q Dr. Armstrong, are you generally</p> <p>13 familiar with United Voices publications?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Are you aware who its editor was of --</p> <p>16 as of 1999?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And is this a publication that you</p> <p>19 would review as part of your efforts to stay up</p> <p>20 to date on the egg industry?</p> <p>21 <b>A Yes. I was a regular recipient.</b></p> <p>22 Q And if you look at the first page of</p>	<p style="text-align: right;">172</p> <p>1 Q And what types of conversations did you</p> <p>2 have with Gene Gregory?</p> <p>3 <b>A I don't recall the details, but I</b></p> <p>4 <b>talked with Gene all along as I was constituting</b></p> <p>5 <b>the committee.</b></p> <p>6 Q And do you see that Gene Gregory --</p> <p>7 sorry, that Armstrong Exhibit 15 that you're</p> <p>8 looking at lists the members of the committee as</p> <p>9 of the date of the first meeting?</p> <p>10 <b>A Yes. The only error I see on the</b></p> <p>11 <b>document is it says I'm head of the poultry</b></p> <p>12 <b>science department, and it's head of animal</b></p> <p>13 <b>science department. Everything else looks</b></p> <p>14 <b>accurate.</b></p> <p>15 Q Okay. And the listing of the members</p> <p>16 of the committee looks accurate as well; correct?</p> <p>17 <b>A That is correct.</b></p> <p>18 Q And there's a picture of these members,</p> <p>19 and although the picture is fuzzy, the names are</p> <p>20 there as well; right?</p> <p>21 <b>A Yes.</b></p> <p>22 Q And in both the picture and the list of</p>
<p style="text-align: right;">171</p> <p>1 this particular United Voices, does it discuss</p> <p>2 the first meeting of the UEP scientific advisory</p> <p>3 committee?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And I asked if you were aware who the</p> <p>6 editor was. Who was the editor as of this time?</p> <p>7 <b>A As listed here, Gene Gregory.</b></p> <p>8 Q All right. And this first meeting</p> <p>9 occurred in February of 1999; correct?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And this is a meeting in Arizona, I</p> <p>12 believe you referenced earlier. Do you recall</p> <p>13 the meeting?</p> <p>14 <b>A I do, yes.</b></p> <p>15 Q Now, you testified earlier today about</p> <p>16 how the members of the meeting were selected; do</p> <p>17 you recall that?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And you testified that part of that</p> <p>20 process involved conversations with Gene Gregory.</p> <p>21 Do you recall that?</p> <p>22 <b>A Yes.</b></p>	<p style="text-align: right;">173</p> <p>1 the members of the committee, Barrie Wilcox,</p> <p>2 Wilcox Farms, is listed as a member; correct?</p> <p>3 <b>A He's shown with the members, yes.</b></p> <p>4 Q Mm-hmm.</p> <p>5 <b>A And he's listed as a member on Gene's</b></p> <p>6 <b>document. Yeah.</b></p> <p>7 Q And Donald Bell is also listed as a</p> <p>8 member; correct?</p> <p>9 <b>A Right. Barrie was an ex-officio</b></p> <p>10 <b>member, Don was a full member.</b></p> <p>11 Q The -- now this document doesn't say</p> <p>12 anything about ex-officio?</p> <p>13 <b>A No, it does not, no.</b></p> <p>14 Q You have an understanding of what an</p> <p>15 ex-officio member is; correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And I believe that's a Latin term; is</p> <p>18 that right?</p> <p>19 <b>A I'm not familiar with the Latin, but I</b></p> <p>20 <b>know an ex-officio can be virtue of title, or it</b></p> <p>21 <b>can be voting are nonvoting.</b></p> <p>22 Q Right. But putting the voting issue</p>

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<p style="text-align: right;">174</p> <p>1 aside, ex-officio means you're a member of some</p> <p>2 body by right of some office you hold in some</p> <p>3 other body; is that right?</p> <p>4 <b>A In this case it was -- the member was</b></p> <p>5 <b>ex-officio as a result of being the chair of the</b></p> <p>6 <b>producer committee. That's correct.</b></p> <p>7 Q And that means essentially -- well,</p> <p>8 strike that.</p> <p>9 Now, when you constituted the</p> <p>10 membership, who suggested that Donald Bell be a</p> <p>11 member?</p> <p>12 <b>A I think Gene Gregory.</b></p> <p>13 Q Now, when you --</p> <p>14 <b>A I'm pretty -- I'm pretty sure it</b></p> <p>15 <b>happened that way, and then I agree -- and I</b></p> <p>16 <b>agreed with that.</b></p> <p>17 Q Now, when you agreed to be the chair of</p> <p>18 the scientific advisory committee -- and to be</p> <p>19 clear, this was a UEP committee; correct?</p> <p>20 <b>A Correct.</b></p> <p>21 Q All right. So we'll call it the UE --</p> <p>22 we'll call it the scientific advisory committee</p>	<p style="text-align: right;">176</p> <p>1 <b>A There are no written rules about it,</b></p> <p>2 <b>no -- I mean yes, that's correct.</b></p> <p>3 Q And did you -- did the committee apply</p> <p>4 the Robert's Rule of Order -- Rules of Order?</p> <p>5 <b>A No. It was not a formal -- it wasn't</b></p> <p>6 <b>run in a formal manner, no, which is not unusual</b></p> <p>7 <b>for a group of academicians.</b></p> <p>8 Q And this -- this exhibit we're looking</p> <p>9 at references that among the issues discussed at</p> <p>10 the first meeting were molting and the economics</p> <p>11 of such. Do you see that?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Do you recall what issues about</p> <p>14 economics were discussed with regard to molting</p> <p>15 at this meeting?</p> <p>16 MS. SUMNER: Object to the form of the</p> <p>17 question.</p> <p>18 MR. OLSON: What's the objection?</p> <p>19 MS. SUMNER: You haven't established</p> <p>20 that --</p> <p>21 THE REPORTER: I'm sorry?</p> <p>22 MS. SUMNER: Lack of foundation.</p>
<p style="text-align: right;">175</p> <p>1 but its full name is UEP's Animal Welfare</p> <p>2 Scientific Advisory Committee?</p> <p>3 <b>A Yes.</b></p> <p>4 Q Now when you agreed to chair this</p> <p>5 committee, were you given any formal set of rules</p> <p>6 that would govern how the business of the</p> <p>7 committee was conducted?</p> <p>8 <b>A No.</b></p> <p>9 Q Did you sit down and create any such</p> <p>10 set of formal rules?</p> <p>11 <b>A No. We --</b></p> <p>12 Q Were you --</p> <p>13 <b>A We discussed guide -- we discussed how</b></p> <p>14 <b>we were going to do things at the first meeting.</b></p> <p>15 Q Just discussed those orally?</p> <p>16 <b>A Best of my recollection.</b></p> <p>17 Q Do you recall at any time anyone</p> <p>18 memorializing the formal rules that would govern</p> <p>19 how business was conducted at the committee?</p> <p>20 <b>A I don't recall.</b></p> <p>21 Q So there are no written formal rules</p> <p>22 about such things as voting; correct?</p>	<p style="text-align: right;">177</p> <p>1 Q You can answer.</p> <p>2 <b>A The topic that was discussed -- and</b></p> <p>3 <b>again, this is Gene's set of notes that I didn't</b></p> <p>4 <b>edit. I didn't write this. Very similar to what</b></p> <p>5 <b>I said earlier, we looked at molting from two</b></p> <p>6 <b>perspectives. What's good about a molt from the</b></p> <p>7 <b>welfare prospective, and what's bad about the</b></p> <p>8 <b>molt.</b></p> <p>9 <b>We discussed it from a production</b></p> <p>10 <b>perspective in that it was clear that not molting</b></p> <p>11 <b>would increase the cost of production. So it was</b></p> <p>12 <b>in that context. Not molting would increase the</b></p> <p>13 <b>cost of production. That was -- that was clear.</b></p> <p>14 Q Okay. Were there other economic issues</p> <p>15 about molting that you recall being discussed at</p> <p>16 around this time?</p> <p>17 <b>A We talked about -- Steig, we talked</b></p> <p>18 <b>about almost every aspect of the industry in that</b></p> <p>19 <b>first meeting. So if it had to do with molting,</b></p> <p>20 <b>we probably discussed it. I just don't recall</b></p> <p>21 <b>the details.</b></p> <p>22 Q Fair enough. And I'm just focusing on</p>



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<p style="text-align: right;">178</p> <p>1 the -- the economic issues related to molting for</p> <p>2 now.</p> <p>3 <b>A Mm-hmm.</b></p> <p>4 <b>Q</b> To you -- to your knowledge, are there</p> <p>5 times when molting is more economically</p> <p>6 attractive for producers than other times?</p> <p>7 <b>A That's really not in my sphere of</b></p> <p>8 <b>expertise.</b></p> <p>9 <b>Q</b> And who on the committee was -- had</p> <p>10 more expertise with regard to economic issues</p> <p>11 than you did?</p> <p>12 <b>MS. SUMNER:</b> Object to the form of the</p> <p>13 question.</p> <p>14 <b>Q</b> If you know?</p> <p>15 <b>A If you look at the different members of</b></p> <p>16 <b>the committee, the person who understood</b></p> <p>17 <b>production better than anyone else would be Don</b></p> <p>18 <b>Bell.</b></p> <p>19 <b>Q</b> And Mr. Bell, would it be fair to say</p> <p>20 also, studied the economic issues related to</p> <p>21 production?</p> <p>22 <b>A I don't know his formal background, but</b></p>	<p style="text-align: right;">180</p> <p>1 <b>MR. KEALEY:</b> Objection to form.</p> <p>2 <b>Q</b> You can answer.</p> <p>3 <b>A I'm getting used to this.</b></p> <p>4 <b>I don't recall a specific conversation</b></p> <p>5 <b>in that context. I can assure you we talked</b></p> <p>6 <b>about the cost of production, feed efficiency of</b></p> <p>7 <b>all the different production systems, as well as</b></p> <p>8 <b>molting and not molting, within the context of</b></p> <p>9 <b>the early discussions of systems.</b></p> <p>10 <b>Q</b> Now, I take it you were aware that</p> <p>11 there were concerns in the egg industry about</p> <p>12 times when there was too much supply in the</p> <p>13 market?</p> <p>14 <b>MS. SUMNER:</b> Objection.</p> <p>15 <b>MR. KEALEY:</b> Objection to form.</p> <p>16 <b>A We focused in our committee meetings --</b></p> <p>17 <b>Q</b> That's not the -- I'm just asking you</p> <p>18 as someone who knows about the egg industry, were</p> <p>19 you aware that this was something that concerned</p> <p>20 egg producers?</p> <p>21 <b>MS. SUMNER:</b> Objection.</p> <p>22 <b>A I have been in animal agriculture my</b></p>
<p style="text-align: right;">179</p> <p>1 <b>he studied every aspect of laying hen production,</b></p> <p>2 <b>so I think that would be fair.</b></p> <p>3 <b>Q</b> Do you recall discussing with Mr. Bell</p> <p>4 at any time the economic consequences of adopting</p> <p>5 a uniform set of cage space allowance guidelines</p> <p>6 in the egg industry?</p> <p>7 <b>MS. SUMNER:</b> Objection.</p> <p>8 <b>A I go ahead and answer; correct?</b></p> <p>9 <b>Q</b> Yes.</p> <p>10 <b>A Okay. We talked about the impact of</b></p> <p>11 <b>various production systems on all aspects of</b></p> <p>12 <b>production. So, the cost of production, feed</b></p> <p>13 <b>efficiency, all of those aspects were very clear.</b></p> <p>14 <b>Because it was very clear to the producers that</b></p> <p>15 <b>giving more space was going to be associated with</b></p> <p>16 <b>an increased cost of production.</b></p> <p>17 <b>Q</b> Did you ever discuss with Mr. Bell the</p> <p>18 notion that adopting a uniform set of cage space</p> <p>19 allowance guidelines could address surplus</p> <p>20 production problems that had affected the egg</p> <p>21 industry?</p> <p>22 <b>MS. SUMNER:</b> Objection.</p>	<p style="text-align: right;">181</p> <p>1 <b>entire career, so I am not oblivious to the ups</b></p> <p>2 <b>and downs of all different types of production,</b></p> <p>3 <b>but that's a normal -- normal thing for a person</b></p> <p>4 <b>in my role.</b></p> <p>5 <b>Q</b> And so would it be fair to say you were</p> <p>6 aware that egg producers paid attention to issues</p> <p>7 about oversupply of eggs in the egg industry?</p> <p>8 <b>MR. KEALEY:</b> Objection to form.</p> <p>9 <b>MS. SUMNER:</b> Objection.</p> <p>10 <b>A I was not in those conversations. I --</b></p> <p>11 <b>all I know is what I read from Feedstuffs and</b></p> <p>12 <b>normal email that comes to a department head of</b></p> <p>13 <b>animal sciences.</b></p> <p>14 <b>(Deposition Exhibit 16 was marked for</b></p> <p>15 <b>identification.)</b></p> <p>16 <b>Q</b> Let me hand you what we've marked</p> <p>17 Armstrong 16. And this is a UEP United Voices</p> <p>18 publication from September 27, 1999, Bates</p> <p>19 stamped UE0064421 through 24. And I'd like you</p> <p>20 to look at the -- I believe the third page of the</p> <p>21 publication. There's an article that's titled</p> <p>22 Animal Welfare Committee to Meet.</p>

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<p style="text-align: right;">182</p> <p>1 <b>A Yes, I see it. I've scanned it.</b></p> <p>2 Q And it references an upcoming meeting</p> <p>3 in September of 1999 in Iowa. Do you see that?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Do you generally recall that meeting?</p> <p>6 <b>A Yes.</b></p> <p>7 Q And there's a listing of the members of</p> <p>8 the scientific committee; do you see that?</p> <p>9 <b>A Correct.</b></p> <p>10 Q And Mr. Wilcox is listed; correct?</p> <p>11 <b>A Yes. And this is Gene's list, not my</b></p> <p>12 <b>list. Yes.</b></p> <p>13 Q But it's an accurate list?</p> <p>14 <b>A That's an accurate list of members and</b></p> <p>15 <b>ex-officio members.</b></p> <p>16 Q Okay. You can put that aside.</p> <p>17 (Deposition Exhibit 17 was marked for</p> <p>18 identification.)</p> <p>19 Q I will hand you what we're marking</p> <p>20 Armstrong 17. This is a document Bates stamped</p> <p>21 UE0297719 through 23.</p> <p>22 And can you identify this,</p>	<p style="text-align: right;">184</p> <p>1 pressing issues that needed to be addressed</p> <p>2 including the current supply/demand problem."</p> <p>3 Do you see that?</p> <p>4 <b>A I sure do.</b></p> <p>5 Q Do you recall those remarks?</p> <p>6 <b>A The thing I recall from Ken's</b></p> <p>7 <b>remarks -- and I don't know if it was exactly at</b></p> <p>8 <b>this meeting, but he was very helpful because he</b></p> <p>9 <b>said we need to be proactive and on the offensive</b></p> <p>10 <b>and look at science-based animal welfare</b></p> <p>11 <b>guidelines, much as we handled the cholesterol</b></p> <p>12 <b>issue in the past.</b></p> <p>13 You asked about my attendance at these</p> <p>14 meetings. I'm in, I'm out. When I'm there</p> <p>15 sometimes I'm on my laptop. So I can only tell</p> <p>16 you what I can recall.</p> <p>17 Q And do you --</p> <p>18 <b>A But I was at these meetings, and I</b></p> <p>19 <b>recall -- you know, I recall hearing Ken Looper</b></p> <p>20 <b>speak on many occasions.</b></p> <p>21 Q And do you recall Mr. Looper at this</p> <p>22 meeting saying that the meeting was extremely</p>
<p style="text-align: right;">183</p> <p>1 Dr. Armstrong, as minutes of an October 14 and</p> <p>2 15, 1999, UEP meetings?</p> <p>3 <b>A Yes, I recognize that these are minutes</b></p> <p>4 <b>from that -- that date.</b></p> <p>5 Q And one of the meetings was the UEP</p> <p>6 annual board meeting and another was an executive</p> <p>7 conference?</p> <p>8 <b>A Correct.</b></p> <p>9 Q In Tucson, Arizona?</p> <p>10 <b>A Correct.</b></p> <p>11 Q Okay. And you attended these meetings;</p> <p>12 correct?</p> <p>13 <b>A Yes. I was there.</b></p> <p>14 Q And, do you know who Ken Looper is?</p> <p>15 <b>A Yes. I know Ken Looper.</b></p> <p>16 Q All right. And if you look at the</p> <p>17 first substantive page, there's the chairman's</p> <p>18 opening comments. Do you see those?</p> <p>19 <b>A Yes, I do.</b></p> <p>20 Q And do you see where it says, referring</p> <p>21 to Chairman Looper, "He stated that this meeting</p> <p>22 was extremely important because of so many</p>	<p style="text-align: right;">185</p> <p>1 important because of pressing issues that needed</p> <p>2 to be addressed, including a supply/demand</p> <p>3 problem?</p> <p>4 <b>A I recall him talking about the meeting.</b></p> <p>5 <b>I do not recall him saying other than what I</b></p> <p>6 <b>said. And I just don't recall the details.</b></p> <p>7 <b>But I'm sure he did if it's written in</b></p> <p>8 <b>the minutes.</b></p> <p>9 Q If you look at the next page there's a</p> <p>10 marketing committee report. Do you see that?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And you were in attendance for that as</p> <p>13 well; correct?</p> <p>14 <b>A For that specific committee report, I</b></p> <p>15 <b>cannot verify if I was in the room or not, but</b></p> <p>16 <b>chances are I was.</b></p> <p>17 Q You were at the meeting where the</p> <p>18 report --</p> <p>19 <b>A I was at the meeting. I just honestly</b></p> <p>20 <b>can't tell you and remember which parts I was in</b></p> <p>21 <b>there for.</b></p> <p>22 Q Fair enough. If you could just briefly</p>

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<p style="text-align: right;">186</p> <p>1 review what's right under that so I can ask one</p> <p>2 or two questions.</p> <p>3 <b>A Yes. I read it.</b></p> <p>4 Q All right. Do you see a reference to a</p> <p>5 Joe Arias?</p> <p>6 <b>A Yes. I see that.</b></p> <p>7 Q And do you know who that is?</p> <p>8 <b>A Yes, I know Joe.</b></p> <p>9 Q Who is Joe Arias?</p> <p>10 <b>A I know Joe as an egg producer who my --</b></p> <p>11 <b>I just remember him. He's got a really big</b></p> <p>12 <b>personality, and you don't forget Joe.</b></p> <p>13 Q All right. Do you see where the</p> <p>14 minutes say "Joe Arias pleaded with the industry</p> <p>15 to only produce eggs for their markets and not be</p> <p>16 tempted to expand with hopes of taking accounts</p> <p>17 away from other producers"? Do you see that?</p> <p>18 <b>A I see that.</b></p> <p>19 Q Do you recall Mr. Arias making those</p> <p>20 remarks?</p> <p>21 <b>A I don't recall those specific remarks.</b></p> <p>22 Q That's the question. If you don't</p>	<p style="text-align: right;">188</p> <p>1 Committee Report that references a presentation</p> <p>2 that you had given. Do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And do you recall giving that</p> <p>5 presentation generally?</p> <p>6 <b>A Yes. I recall that -- I recall giving</b></p> <p>7 <b>that presentation, I think it was the first time.</b></p> <p>8 <b>And I let them know about the significant changes</b></p> <p>9 <b>we were recommending.</b></p> <p>10 Q Okay. So there's a reference to you</p> <p>11 referencing some preliminary recommendations. Is</p> <p>12 that what you just referred to?</p> <p>13 <b>A Yes. If this was -- let me double</b></p> <p>14 <b>check the date. This was October, so by that</b></p> <p>15 <b>time, we would have had the February meeting, and</b></p> <p>16 <b>then we also had the September meeting. And I</b></p> <p>17 <b>don't recall whether it was this meeting or a</b></p> <p>18 <b>later meeting, but it was when I talked about 72</b></p> <p>19 <b>square inches and other aspects of the</b></p> <p>20 <b>guidelines.</b></p> <p>21 Q And you referenced a time you alerted</p> <p>22 folks at UEP to some of the significant changes</p>
<p style="text-align: right;">187</p> <p>1 know --</p> <p>2 <b>A I don't recall the specific remarks.</b></p> <p>3 Q I have to ask the question, if --</p> <p>4 <b>A Sure. Sure.</b></p> <p>5 Q -- the answer's "no," that's a fair</p> <p>6 answer.</p> <p>7 Well, do you see that under the motion</p> <p>8 to address the issues, there's a motion to</p> <p>9 immediately molt 5 percent of your flock?</p> <p>10 <b>A Mm-hmm.</b></p> <p>11 Q Do you know any way that immediately</p> <p>12 molting 5 percent of a flock relates to supply</p> <p>13 and demand issues in the egg industry?</p> <p>14 MR. KEALEY: Objection to form.</p> <p>15 <b>A That's -- that's beyond my expertise,</b></p> <p>16 <b>and from my broad knowledge, I know that molting</b></p> <p>17 <b>was a practice that the producers used in a</b></p> <p>18 <b>variety of means. Our focus on the committee was</b></p> <p>19 <b>the animal welfare aspect of molting, and nothing</b></p> <p>20 <b>really focused on that.</b></p> <p>21 Q All right. And if you look at the next</p> <p>22 page there's a heading that says Animal Welfare</p>	<p style="text-align: right;">189</p> <p>1 that the scientific advisory committee was</p> <p>2 recommending. In addition to the 72 inches of</p> <p>3 cage space, were there other significant changes</p> <p>4 that the -- that you alerted the producers to?</p> <p>5 MS. SUMNER: Objection.</p> <p>6 <b>A So I talked about molting, and I talked</b></p> <p>7 <b>about the good things of molting and the bad</b></p> <p>8 <b>things of molting.</b></p> <p>9 Q Well, let's pause on that. What were</p> <p>10 the significant changes with regard to molting</p> <p>11 that the scientific advisory committee was</p> <p>12 recommending?</p> <p>13 <b>A We -- we at that time, we were</b></p> <p>14 <b>recommending that as soon as possible they find a</b></p> <p>15 <b>non-feed-withdrawal method to induce the molt</b></p> <p>16 <b>versus a feed-withdrawal method.</b></p> <p>17 Q Were there any other significant</p> <p>18 changes with regard to molting practices that the</p> <p>19 committee was recommending?</p> <p>20 <b>A At that time, as I recall, we were</b></p> <p>21 <b>focused on not eliminating the molt but finding a</b></p> <p>22 <b>non-feed withdrawal.</b></p>

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<p style="text-align: right;">190</p> <p>1 Q I understand. So -- so one thing is</p> <p>2 you were saying there needed -- there should be</p> <p>3 research into non-feed withdrawal?</p> <p>4 <b>A And then we also talked about things a</b></p> <p>5 <b>producer could do to evaluate and mitigate the</b></p> <p>6 <b>negative welfare impacts of the current practice.</b></p> <p>7 <b>We did not talk about timing of when they would</b></p> <p>8 <b>implement, other than implement these practices</b></p> <p>9 <b>because it represented no change, it represented</b></p> <p>10 <b>modifying and looking -- modifying slightly and</b></p> <p>11 <b>looking at how they were handling normal practice</b></p> <p>12 <b>of a feed withdrawal molt.</b></p> <p>13 Q And do you see a reference that the</p> <p>14 committee would meet again in February to</p> <p>15 hopefully complete their work at that time?</p> <p>16 <b>A I do.</b></p> <p>17 Q So was your understanding as of</p> <p>18 October 1999 that the committee would complete at</p> <p>19 least its initial work on the guidelines as of</p> <p>20 February 2000?</p> <p>21 <b>A That makes -- that makes logical sense.</b></p> <p>22 <b>I don't remember all the details. But the</b></p>	<p style="text-align: right;">192</p> <p>1 <b>A Mm-hmm.</b></p> <p>2 Q Is that what you're saying?</p> <p>3 <b>A Mm-hmm.</b></p> <p>4 Q Now if we look back at this marketing</p> <p>5 committee report on the prior page --</p> <p>6 <b>A Correct.</b></p> <p>7 Q -- do you see Point 1, there's a</p> <p>8 motion. It says there was a motion for the</p> <p>9 members to reduce each member's flock size by</p> <p>10 5 percent as quickly as possible and to maintain</p> <p>11 this through July 1, 2000. Do you see that?</p> <p>12 <b>A I do see that.</b></p> <p>13 Q Was the scientific advisory committee</p> <p>14 ever asked to evaluate whether producers reducing</p> <p>15 their flock size by 5 percent as quickly as</p> <p>16 possible was a humane thing to do?</p> <p>17 <b>A I don't recall. I really don't recall.</b></p> <p>18 <b>I don't recall it being a topic of discussion,</b></p> <p>19 <b>but if it was, it wasn't something that makes me</b></p> <p>20 <b>remember it today.</b></p> <p>21 Q Okay. And if the way that was to be</p> <p>22 done was by slaughtering 5 percent of hens, would</p>
<p style="text-align: right;">191</p> <p>1 <b>core -- I believe at this time some of the core</b></p> <p>2 <b>recommendations were there. For example, I know</b></p> <p>3 <b>the first time I presented, if this was indeed, I</b></p> <p>4 <b>think, the first time I presented, I used 72. We</b></p> <p>5 <b>went back at the next meeting and talked about a</b></p> <p>6 <b>range making more sense from a biological and a</b></p> <p>7 <b>strain perspective.</b></p> <p>8 Q At which next meeting did you go back</p> <p>9 on the 72?</p> <p>10 <b>A If this was indeed the meeting where I</b></p> <p>11 <b>talked about 72, then it would have been</b></p> <p>12 <b>reference to that next February meeting where we</b></p> <p>13 <b>would've talked about the range, I think. Best</b></p> <p>14 <b>of my recollection.</b></p> <p>15 <b>I don't know if it spanned two meetings</b></p> <p>16 <b>or three meetings. I don't remember how</b></p> <p>17 <b>frequently we met then.</b></p> <p>18 Q So in your first presentation to the</p> <p>19 UEP members you talked about 72 inches per hen,</p> <p>20 and then after that went back to the scientific</p> <p>21 advisory committee and went to a range instead of</p> <p>22 that number?</p>	<p style="text-align: right;">193</p> <p>1 that be a humane thing to do?</p> <p>2 MR. KEALEY: Objection to form.</p> <p>3 <b>A The committee nor I -- as I attended</b></p> <p>4 <b>these meetings, I didn't focus on the details of</b></p> <p>5 <b>the other committees.</b></p> <p>6 Q You can put that aside. I'm just</p> <p>7 asking you a question.</p> <p>8 <b>A No. That's what I'm saying. Whether</b></p> <p>9 <b>it's attending this meeting or others, I didn't</b></p> <p>10 <b>focus on the details, I focused on the details of</b></p> <p>11 <b>the animal welfare committee and the animal</b></p> <p>12 <b>welfare report. I can tell you from a</b></p> <p>13 <b>perspective of the animal welfare committee that</b></p> <p>14 <b>we talked about on-farm euthanasia almost -- the</b></p> <p>15 <b>best of my recollection, that was with regard to</b></p> <p>16 <b>disease situations, cannibalistic outbreaks. We</b></p> <p>17 <b>were more focused about how you do it, not when</b></p> <p>18 <b>you should do it or -- and again, I don't recall</b></p> <p>19 <b>being posed that specific question.</b></p> <p>20 Q Well, let me just ask the question, and</p> <p>21 the question is, as the former long-time chairman</p> <p>22 of the scientific advisory committee, if you have</p>

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<p style="text-align: right;">194</p> <p>1 an opinion on the following -- the question had 2 been presented to you: Is it consistent with 3 animal welfare practices for the producer members 4 of the UEP to slaughter 5 percent of their flock, 5 not because of disease, not because of 6 cannibalistic outbreaks, but only to increase the 7 price of eggs? Would that be something in your 8 view that's consistent with animal welfare? 9 MR. KEALEY: Objection to form. 10 MS. SUMNER: Objection. 11 <b>A That's not the context that we would</b> 12 <b>ever discuss anything. If you look at --</b> 13 Q I'm just asking you now. 14 <b>A No, I know, and I'm giving you an</b> 15 <b>answer.</b> 16 <b>But if you look at what we just talked</b> 17 <b>about in the very first meeting, I was very</b> 18 <b>clear, and I said let's have a basic discussion</b> 19 <b>of animal welfare. We're going to use these</b> 20 <b>animals, when their lifetime is up they're going</b> 21 <b>to be slaughtered. That impinges on their animal</b> 22 <b>welfare but it's done in a humane way, humane</b></p>	<p style="text-align: right;">196</p> <p>1 Do you have a view about whether 2 producers slaughtering 5 percent of those hens 3 for the purpose of increasing the price of eggs 4 is consistent with animal welfare or is 5 inconsistent with animal welfare? 6 MR. KEALEY: Objection to form. 7 MS. SUMNER: Objection to form. 8 <b>A The determination of when the useful</b> 9 <b>lifetime of a hen is over is extremely open for</b> 10 <b>debate. Some would argue that a bird should</b> 11 <b>never be slaughtered and they should go to a</b> 12 <b>spent hen farm and live their life out fully.</b> 13 Q But I don't think we're in that debate. 14 <b>A The committee and I recognize that a</b> 15 <b>bird will be slaughtered at the end of its</b> 16 <b>usefulness on that -- on that farm, and there's a</b> 17 <b>lot of things that determine that, and that's my</b> 18 <b>answer.</b> 19 Q But this question is not about, you 20 know, the margins of, you know, whether a hen's 21 useful lifetime is over. Let's assume for the 22 purpose of the question that we're right in the</p>
<p style="text-align: right;">195</p> <p>1 <b>slaughter.</b> 2 <b>So the committee is not going to get</b> 3 <b>into deciding when a flock is -- is terminated.</b> 4 <b>It was a clear understanding from the committee</b> 5 <b>that when a flock quits lay, they go either to</b> 6 <b>spent hen, or another big discussion that</b> 7 <b>happened is the reason the on-farm euthanasia was</b> 8 <b>discussed by the committee is that the price of</b> 9 <b>spent hens became such that it was impractical to</b> 10 <b>transport hens off the farm.</b> 11 <b>And so we were more focused about how</b> 12 <b>they would euthanize a group of hens. And we</b> 13 <b>didn't -- we didn't make a judgment as to whether</b> 14 <b>they were euthanized there or in the</b> 15 <b>slaughterhouse or et cetera. We were focused on</b> 16 <b>the humane slaughter, or euthanasia.</b> 17 Q Just to be clear on my question, this 18 isn't -- I'm not asking about hens who have 19 finished laying eggs. We're not asking about 20 hens that have disease. We're not asking about 21 cannibalistic outbreak. This question is about 22 hens in the prime of their production.</p>	<p style="text-align: right;">197</p> <p>1 prime of a hen's egg-laying capability. Does 2 that affect your answer? 3 <b>A I've not been exposed to that in a real</b> 4 <b>life situation with the committee.</b> 5 Q So you don't have a view? 6 <b>A I don't have a view.</b> 7 Q All right. Now -- 8 <b>A I would -- I'm sure the committee would</b> 9 <b>be happy to take it up, and that's exactly what I</b> 10 <b>would do. I would go back to them.</b> 11 Q But the committee was never asked to 12 look at a question like that? 13 <b>A Not that I recall.</b> 14 Q Okay. 15 <b>A And I think I would -- I think that</b> 16 <b>would stimulate quite a bit of debate.</b> 17 Q Okay. If you could look at Exhibit 8 18 that you were shown this morning, that's what I'd 19 like to talk about next, because it's in the time 20 line of where we are. 21 <b>A This? Okay.</b> 22 Q Yes.</p>

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<p style="text-align: right;">198</p> <p>1 <b>A Got it.</b></p> <p>2 Q Now, Exhibit 8 should be the May 2000</p> <p>3 recommendations for the UEP animal welfare</p> <p>4 guidelines submitted by the scientific advisory</p> <p>5 committee; correct?</p> <p>6 <b>A Yes.</b></p> <p>7 Q And you were the editor-in-chief of</p> <p>8 this document; correct?</p> <p>9 <b>A Yes.</b></p> <p>10 Q Okay.</p> <p>11 <b>A Yes.</b></p> <p>12 Q Now if we look at the first page --</p> <p>13 <b>A And it bounced all over -- these</b></p> <p>14 <b>documents bounced all over the place. You know.</b></p> <p>15 <b>Word documents bounced all over the place.</b></p> <p>16 Q All right. If you look at the first</p> <p>17 page there's a mission statement from the</p> <p>18 scientific advisory committee on animal welfare.</p> <p>19 Do you see that?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And you wrote that; correct?</p> <p>22 <b>A Yes. Best of my recollection.</b></p>	<p style="text-align: right;">200</p> <p>1 Q -- Exhibit 18.</p> <p>2 (Deposition Exhibit 18 was marked for</p> <p>3 identification.)</p> <p>4 <b>A Okay.</b></p> <p>5 MR. OLSON: Did I not give you one?</p> <p>6 <b>A Okay.</b></p> <p>7 Q All right. Give me a moment so I don't</p> <p>8 get confused.</p> <p>9 So what I just handed you, Armstrong 18</p> <p>10 was previously Gregory 19, Bates stamped DAY -- I</p> <p>11 think five zeros, 29 through 55.</p> <p>12 All right. And this is also dated</p> <p>13 May 2000, Recommendations for UEP Animal Welfare</p> <p>14 Guidelines, Submitted by a Scientific Advisory</p> <p>15 Committee on Animal Welfare; correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q All right. And if we look at the first</p> <p>18 page there's that same mission statement;</p> <p>19 correct?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And where it says UEP to provide one</p> <p>22 staff member and a producer as ex-officio members</p>
<p style="text-align: right;">199</p> <p>1 Q If you -- if you look at the second</p> <p>2 full paragraph towards the bottom, there's a</p> <p>3 sentence that says, "UEP did provide one staff</p> <p>4 member and a producer as ex-officio members of</p> <p>5 the committee." Do you see that?</p> <p>6 <b>A Yes.</b></p> <p>7 Q And that was a true statement; correct?</p> <p>8 <b>A That's correct.</b></p> <p>9 Q And if you look at the next page,</p> <p>10 there's a listing of the UEP scientific advisory</p> <p>11 committee members for animal welfare; correct?</p> <p>12 <b>A Mine's missing on Exhibit 8. I noticed</b></p> <p>13 <b>that earlier. My page is missing.</b></p> <p>14 Q Okay. Well, it looks like the version</p> <p>15 is --</p> <p>16 <b>A I'd noticed that earlier, but we talked</b></p> <p>17 <b>about the October version or whatever --</b></p> <p>18 <b>September version.</b></p> <p>19 Q Okay. Let me then hand you something</p> <p>20 I'll mark as -- but keep that one out for me,</p> <p>21 please.</p> <p>22 <b>A Okay.</b></p>	<p style="text-align: right;">201</p> <p>1 of the committee; right?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And the next page is a listing of the</p> <p>4 committee members; right?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Has Barrie Wilcox there; right?</p> <p>7 <b>A Yes.</b></p> <p>8 Q And it says UEP staff coordinator, Gene</p> <p>9 Gregory; right?</p> <p>10 <b>A That's correct.</b></p> <p>11 Q And then the next page is a preamble</p> <p>12 which also, I believe, is in Armstrong Exhibit 8.</p> <p>13 But --</p> <p>14 <b>A I think so.</b></p> <p>15 Q Yeah. But let's just choose one.</p> <p>16 Let's look at 18.</p> <p>17 <b>A Okay.</b></p> <p>18 Q Now is this something -- also something</p> <p>19 that you authored?</p> <p>20 <b>A I -- like I said, I was kind of the</b></p> <p>21 <b>editor-in-chief, so I didn't necessarily write</b></p> <p>22 <b>every section.</b></p>



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<p style="text-align: right;">202</p> <p>1 Q Do you recall whether you offered this</p> <p>2 preamble?</p> <p>3 <b>A I don't recall.</b></p> <p>4 Q Do you recall who did?</p> <p>5 <b>A I -- I don't know. That might have</b></p> <p>6 <b>been -- Gene might have written first draft of</b></p> <p>7 <b>this. I'm not sure.</b></p> <p>8 Q Okay.</p> <p>9 <b>A Either Gene or -- I don't know. Maybe</b></p> <p>10 <b>Janice. I don't remember.</b></p> <p>11 Q Were there parts of this, the</p> <p>12 scientific advisory committee's recommendations</p> <p>13 for animal welfare guidelines that were first</p> <p>14 drafted by Mr. Gregory?</p> <p>15 <b>A There may have been from a logistical</b></p> <p>16 <b>perspective. I don't recall. But I can tell you</b></p> <p>17 <b>that every word was perused and supported and</b></p> <p>18 <b>tossed around by the committee members.</b></p> <p>19 Q Okay. So if you look at the second</p> <p>20 page of the preamble where it says, "Recognizing</p> <p>21 the growing concern for animal welfare</p> <p>22 world-wide, UEP commissioned a scientific</p>	<p style="text-align: right;">204</p> <p>1 you see that?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Do you recall who drafted that</p> <p>4 language?</p> <p>5 <b>A I don't know who drafted that language,</b></p> <p>6 <b>but I can tell you I led the discussion early in</b></p> <p>7 <b>our meetings that we would not be involved with</b></p> <p>8 <b>implementation or mandating timing.</b></p> <p>9 Q Well, other than timing, were there</p> <p>10 other aspects that the scientific advisory</p> <p>11 committee would not be involved in implementing?</p> <p>12 MR. KEALEY: Objection to form.</p> <p>13 MS. SUMNER: Objection.</p> <p>14 <b>A That -- that question is difficult to</b></p> <p>15 <b>understand. The best way I can answer it is that</b></p> <p>16 <b>we focused on animal welfare first and foremost,</b></p> <p>17 <b>but we did not do that in a vacuum.</b></p> <p>18 Q You considered economic factors?</p> <p>19 <b>A We considered the cost of production,</b></p> <p>20 <b>we considered feed efficiency, we considered</b></p> <p>21 <b>many, many aspects. We also considered public --</b></p> <p>22 <b>public perception.</b></p>
<p style="text-align: right;">203</p> <p>1 advisory committee for animal welfare in 1999."</p> <p>2 Do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And this is part of those words that</p> <p>5 would have been scrubbed by all the committee</p> <p>6 members; right?</p> <p>7 <b>A The committee would have reviewed the</b></p> <p>8 <b>entire thing, yeah.</b></p> <p>9 Q And then it says, "This committee was</p> <p>10 comprised of" -- do you see that?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Six university representatives, two</p> <p>13 USDA agriculture research service</p> <p>14 representatives, one American Humane Association</p> <p>15 executive, one veterinarian, one egg producer.</p> <p>16 Do you see that?</p> <p>17 <b>A I do.</b></p> <p>18 Q Now if you look at the bottom of this</p> <p>19 page it says, "The committee takes no</p> <p>20 responsibility for mandating these</p> <p>21 recommendations, recognizing that the producers</p> <p>22 must voluntarily accept and implement them." Do</p>	<p style="text-align: right;">205</p> <p>1 Q Did you consider -- well, strike that.</p> <p>2 All right. So --</p> <p>3 <b>A We considered those --</b></p> <p>4 Q -- let's look the next page that's</p> <p>5 titled --</p> <p>6 <b>A We considered those --</b></p> <p>7 MR. KEALEY: If you can wait until he's</p> <p>8 finished with his response.</p> <p>9 <b>A Go ahead.</b></p> <p>10 Q I'm trying to be as fast as possible.</p> <p>11 <b>A Gotcha. Keep going.</b></p> <p>12 Q The next -- the next page is titled</p> <p>13 Public Perceptions and Attitudes; do you see</p> <p>14 that?</p> <p>15 <b>A Yes, I -- let me get to it.</b></p> <p>16 Q You went past it.</p> <p>17 <b>A Okay.</b></p> <p>18 Q And then I'm going to look at the</p> <p>19 recommendations at the end of it.</p> <p>20 <b>A Yes.</b></p> <p>21 Q Point No. 2 says, "The recommendations</p> <p>22 in the UEP Guidelines should be designed to</p>

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<p style="text-align: right;">206</p> <p>1 foster high standards of hen welfare while still</p> <p>2 maintaining the economic vitality of the</p> <p>3 industry."</p> <p>4 Do you see that?</p> <p>5 <b>A I do.</b></p> <p>6 Q In what way did the scientific advisory</p> <p>7 committee consider how to maintain the economic</p> <p>8 vitality of the industry?</p> <p>9 <b>A It was --</b></p> <p>10 MS. SUMNER: Objection.</p> <p>11 <b>A It was simply from the perspective --</b></p> <p>12 <b>and by the way, this section I recall very</b></p> <p>13 <b>clearly was written by Janice Swanson. She was</b></p> <p>14 <b>the primary author. We primarily looked at</b></p> <p>15 <b>practicality. And a good example is, you know,</b></p> <p>16 <b>we didn't say go immediately to a non-feed</b></p> <p>17 <b>withdrawal molt because it was not practical.</b></p> <p>18 <b>The industry couldn't do it.</b></p> <p>19 Q Even though anyone supplying McDonald's</p> <p>20 had to do that; right?</p> <p>21 MR. KEALEY: Objection to the form of</p> <p>22 the question. It's argumentative, lacks</p>	<p style="text-align: right;">208</p> <p>1 <b>doable for them.</b></p> <p>2 Q And so --</p> <p>3 <b>A They also banned the gestation --</b></p> <p>4 Q -- there were suppliers --</p> <p>5 MR. KEALEY: I don't think he finished</p> <p>6 his answer.</p> <p>7 <b>A They also banned gestation crates. And</b></p> <p>8 <b>I was involved -- I was --</b></p> <p>9 Q We're off topic with this --</p> <p>10 MR. KEALEY: No, you need to let the</p> <p>11 witness finish his answer.</p> <p>12 MS. SUMNER: But I didn't ask anything</p> <p>13 about gestation crates.</p> <p>14 MR. KEALEY: You asked an open-ended</p> <p>15 question --</p> <p>16 MR. OLSON: No, I didn't.</p> <p>17 MR. KEALEY: Yes, you did.</p> <p>18 MR. OLSON: No, I didn't.</p> <p>19 MR. KEALEY: Can we have the question</p> <p>20 read back, please.</p> <p>21 (The reporter read the requested</p> <p>22 question.)</p>
<p style="text-align: right;">207</p> <p>1 foundation. Who are you speaking about?</p> <p>2 Q Well, let me just ask a foundation. Is</p> <p>3 that true, McDonald's at this time --</p> <p>4 THE REPORTER: Could you repeat your</p> <p>5 question, please?</p> <p>6 MR. OLSON: I'll just --</p> <p>7 MR. KEALEY: You're withdrawing the</p> <p>8 question?</p> <p>9 MR. OLSON: -- ask it a different way.</p> <p>10 MR. KEALEY: Okay. It's withdrawn.</p> <p>11 Q Is it true, Dr. Armstrong, that at this</p> <p>12 time McDonald's required its suppliers to no</p> <p>13 longer use a forced molt?</p> <p>14 <b>A They did.</b></p> <p>15 Q So it was doable?</p> <p>16 <b>A It was doable in the context of</b></p> <p>17 <b>McDonald's which had very few egg suppliers.</b></p> <p>18 Q McDonald's buys small amount of eggs or</p> <p>19 a large amount of eggs?</p> <p>20 <b>A Relative to the rest of the people that</b></p> <p>21 <b>buy eggs, it's a large amount. Relative to the</b></p> <p>22 <b>98 percent of the eggs in cages, it was very</b></p>	<p style="text-align: right;">209</p> <p>1 MR. OLSON: That was the question. And</p> <p>2 then I think I asked -- was there a question</p> <p>3 after that?</p> <p>4 THE REPORTER: I think you began but</p> <p>5 you were speaking at the same time.</p> <p>6 MR. OLSON: Okay. Okay.</p> <p>7 Q So you've answered that one.</p> <p>8 So -- and egg suppliers were able,</p> <p>9 after McDonald's made that change, to supply</p> <p>10 McDonald's with eggs without using a forced molt;</p> <p>11 correct?</p> <p>12 <b>A No. They were not. Not all were able</b></p> <p>13 <b>to maintain as egg suppliers to McDonald's. At</b></p> <p>14 <b>the beginning -- at about the time that</b></p> <p>15 <b>McDonald's did this, I think they had</b></p> <p>16 <b>approximately 26 shell egg providers. I don't</b></p> <p>17 <b>know exactly the number that it dropped to, but</b></p> <p>18 <b>it dropped to probably three.</b></p> <p>19 Q Okay. But --</p> <p>20 <b>A Because producers were not able to</b></p> <p>21 <b>accommodate the guidelines or other reasons. I</b></p> <p>22 <b>only know the facts of that change. I can only</b></p>

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<p style="text-align: right;">210</p> <p>1 <b>give you an estimate of the reasons.</b></p> <p>2 Q But McDonald's continued to sell</p> <p>3 Egg McMuffins after they made the change; right?</p> <p>4 <b>A Correct.</b></p> <p>5 Q Their needs, McDonald's needs for eggs</p> <p>6 were satisfied by the industry; correct?</p> <p>7 <b>A That is correct, but McDonald's is not</b></p> <p>8 <b>a mandatory organization.</b></p> <p>9 Q What is a mandatory organization?</p> <p>10 <b>A Well, UEP is a voluntary organization.</b></p> <p>11 <b>McDonald's, if you're going to supply them eggs,</b></p> <p>12 <b>you agree to certain conditions.</b></p> <p>13 Q Right. And --</p> <p>14 <b>A You're comparing apples and oranges.</b></p> <p>15 Q Well, I'm trying to understand. You</p> <p>16 said it wasn't practical to, at this time, no</p> <p>17 longer use the forced-starvation molt. And why</p> <p>18 was it -- why was it practical for McDonald's to</p> <p>19 have its suppliers do it but it wasn't practical</p> <p>20 for others to do it?</p> <p>21 MR. KEALEY: Objection to the form of</p> <p>22 the question.</p>	<p style="text-align: right;">212</p> <p>1 Q -- in fact these are --</p> <p>2 THE REPORTER: Wait. Excuse me a</p> <p>3 minute.</p> <p>4 Okay. Thank you.</p> <p>5 Q You said in fact these were</p> <p>6 conservative recommendations?</p> <p>7 <b>A No. I said that our measures of animal</b></p> <p>8 <b>welfare, mortality and per-hen production are the</b></p> <p>9 <b>two most conservative measures of animal welfare.</b></p> <p>10 <b>Measuring animal welfare is not as easy as one</b></p> <p>11 <b>might think. It is very complicated, and it is</b></p> <p>12 <b>controversial even among scientists, but those</b></p> <p>13 <b>two measures are not controversial.</b></p> <p>14 Q Okay. I appreciate that clarification.</p> <p>15 So, in any case, the -- the guidelines</p> <p>16 here reflect a floor of sorts, the minimum</p> <p>17 guidelines to produce eggs in a humane way. Fair</p> <p>18 statement?</p> <p>19 <b>A In a caged system.</b></p> <p>20 MS. SUMNER: Objection.</p> <p>21 <b>A Yes.</b></p> <p>22 Q In a caged system?</p>
<p style="text-align: right;">211</p> <p>1 MS. SUMNER: Objection.</p> <p>2 <b>A It was because at the beginning</b></p> <p>3 <b>producers did not want changes. A significant</b></p> <p>4 <b>number of producers did not want changes. Some</b></p> <p>5 <b>still do not want changes. So we were trying to</b></p> <p>6 <b>get and move as fast as possible -- McDonald's is</b></p> <p>7 <b>a leader in animal welfare, and they typically</b></p> <p>8 <b>move faster.</b></p> <p>9 <b>So the producers did not want to change</b></p> <p>10 <b>the starvation-induced molt. Producers did not</b></p> <p>11 <b>want to give birds more space at the beginning of</b></p> <p>12 <b>our discussions. Over time I believe they</b></p> <p>13 <b>listened and responded to the animal welfare</b></p> <p>14 <b>committee. They did not want to make these</b></p> <p>15 <b>changes at the beginning.</b></p> <p>16 Q Now you've described the</p> <p>17 recommendations layed out in this document as a</p> <p>18 minimum baseline for animal welfare.</p> <p>19 <b>A That's correct.</b></p> <p>20 MS. SUMNER: Object to the --</p> <p>21 Q And you said --</p> <p>22 MS. SUMNER: -- question.</p>	<p style="text-align: right;">213</p> <p>1 <b>A Humane. The minimum for humane housing</b></p> <p>2 <b>of hens.</b></p> <p>3 Q All right. Well, let's just -- we've</p> <p>4 already gone through them, and I'll try not to</p> <p>5 duplicate, but let's go through these a little</p> <p>6 bit. Let's start with beak trimming.</p> <p>7 <b>A Which document are you referring to?</b></p> <p>8 Q Let's use Armstrong 18.</p> <p>9 MS. SUMNER: I'm going to object to</p> <p>10 that. I mean, this he had testified to is a</p> <p>11 draft, and I don't know why -- I'm objecting to</p> <p>12 the extent that these questions pretend like</p> <p>13 these are the final recommendations of the</p> <p>14 committee.</p> <p>15 MR. OLSON: Okay. I don't really</p> <p>16 consider that an appropriate objection, but it's</p> <p>17 noted.</p> <p>18 Q So let's look at -- I mean, why don't</p> <p>19 we use the one that --</p> <p>20 <b>A Do you want to use --</b></p> <p>21 Q -- counsel used. Is that 5?</p> <p>22 <b>A -- Exhibit 2?</b></p>

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<p style="text-align: right;">214</p> <p>1 Q Was it 2? The May one.</p> <p>2 MS. SUMNER: 2.</p> <p>3 MR. OLSON: No, I want to use the</p> <p>4 May one.</p> <p>5 MS. SUMNER: Well, the May one's a</p> <p>6 draft.</p> <p>7 Q 8. Let's use 8, please. I don't think</p> <p>8 there's any difference, but -- a significant</p> <p>9 difference.</p> <p>10 All right. So let's use Exhibit 8,</p> <p>11 this is May 2000, the one you discussed this</p> <p>12 morning with UEP counsel; right?</p> <p>13 <b>A I discussed Exhibit 2 with the counsel</b></p> <p>14 <b>this morning.</b></p> <p>15 Q And we're going to --</p> <p>16 MS. SUMNER: Yeah, objection.</p> <p>17 Misstates his testimony.</p> <p>18 Q We're going to object to Exhibit 2, but</p> <p>19 I would like to start with Exhibit 8.</p> <p>20 <b>A Okay.</b></p> <p>21 MS. SUMNER: Objection. Misstates his</p> <p>22 testimony. We didn't really discuss Exhibit 8</p>	<p style="text-align: right;">216</p> <p>1 <b>A Beak trimming, yes.</b></p> <p>2 Q And the -- and the disadvantages are</p> <p>3 short-term and perhaps long-term pain; correct?</p> <p>4 <b>A Correct.</b></p> <p>5 Q And short-term stress following the</p> <p>6 beak trimming; right?</p> <p>7 <b>A Which is what you just said, short-term</b></p> <p>8 <b>and long-term pain.</b></p> <p>9 Q Well, this document breaks it out to</p> <p>10 also referred to stress following the beak</p> <p>11 trimming.</p> <p>12 <b>A Sure.</b></p> <p>13 Q And part of that is because the baby</p> <p>14 bird -- ability to eat after the trimming process</p> <p>15 is impaired; right?</p> <p>16 <b>A I would -- I would assume so. I don't</b></p> <p>17 <b>recall all the details of that, but --</b></p> <p>18 Q Do you see in the middle of the</p> <p>19 literature review, the sentence that says "the</p> <p>20 bird's ability"?</p> <p>21 <b>A Yes. Then that's -- then I would</b></p> <p>22 <b>agree. Yes.</b></p>
<p style="text-align: right;">215</p> <p>1 other than for him to say it was a draft.</p> <p>2 MR. OLSON: All right.</p> <p>3 Q So let's start with beak trimming which</p> <p>4 is on the one that ends in 901.</p> <p>5 <b>A Exhibit 8?</b></p> <p>6 Q Exhibit 8, please.</p> <p>7 <b>A What page?</b></p> <p>8 Q Well, the Bates number ends in 901.</p> <p>9 <b>A Okay.</b></p> <p>10 Q Is that not correct?</p> <p>11 <b>A That is correct.</b></p> <p>12 Q Okay.</p> <p>13 <b>A Beak trimming starts, and then --</b></p> <p>14 Q All right. And there's a Background</p> <p>15 section; right?</p> <p>16 <b>A Yeah. That's the way we typically put</b></p> <p>17 <b>this together. Background, Literature Review,</b></p> <p>18 <b>Conclusions, and then Recommendations.</b></p> <p>19 Q Okay. So the -- in the literature</p> <p>20 review it discusses that beak trimming has both</p> <p>21 disadvantages and advantages from the welfare</p> <p>22 standpoint; correct?</p>	<p style="text-align: right;">217</p> <p>1 Q Okay. And so -- and this is the</p> <p>2 science at the time. This reflects your -- the</p> <p>3 committee's best effort to reflect the science at</p> <p>4 the time; correct?</p> <p>5 MS. SUMNER: Objection.</p> <p>6 <b>A The best science at the time of this</b></p> <p>7 <b>document that was produced, which is a draft,</b></p> <p>8 <b>that's correct.</b></p> <p>9 Q All right. And, do you see the next</p> <p>10 paragraph that starts, "Evidence suggests"?</p> <p>11 <b>A Yes.</b></p> <p>12 Q It says, "Evidence suggests that</p> <p>13 primary breeders of egg-laying strains can select</p> <p>14 for a more docile bird and minimize the need to</p> <p>15 beak trim from a behavioral point of view." Do</p> <p>16 you see that?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And that was what science at the time</p> <p>19 said as well; right?</p> <p>20 <b>A That was science at the time</b></p> <p>21 <b>demonstrating that it's possible, but it required</b></p> <p>22 <b>implementation.</b></p>

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<p style="text-align: right;">218</p> <p>1 Q Right. And it would be a humane thing</p> <p>2 to do to put that into effect; right?</p> <p>3 <b>A Yes.</b></p> <p>4 MR. KEALEY: Objection. Form.</p> <p>5 <b>A But the committee realized that was</b></p> <p>6 <b>years away.</b></p> <p>7 Q And then there's the conclusions of the</p> <p>8 committee. Do you see that?</p> <p>9 <b>A I do.</b></p> <p>10 Q It talks about weighing the evidence.</p> <p>11 And then it says, "Using genetic stocks that</p> <p>12 require little or no beak trimming is the most</p> <p>13 desirable approach." Do you see that?</p> <p>14 <b>A That is correct.</b></p> <p>15 Q And that was the teaching of science at</p> <p>16 the time; correct?</p> <p>17 <b>A Right. But the committee also had the</b></p> <p>18 <b>opinion that those stocks did not exist at the</b></p> <p>19 <b>time.</b></p> <p>20 Q Well, where does it say that?</p> <p>21 <b>A I'm just telling you what we talked</b></p> <p>22 <b>about from a committee perspective.</b></p>	<p style="text-align: right;">220</p> <p>1 question and pause.</p> <p>2 Q This document doesn't say under all</p> <p>3 management systems and with all genetic stocks</p> <p>4 beak trimming is --</p> <p>5 MR. KEALEY: Document --</p> <p>6 Q -- recommended; does it?</p> <p>7 MR. KEALEY: -- speaks for itself.</p> <p>8 THE REPORTER: Excuse me a minute.</p> <p>9 Could you repeat your question and your answer,</p> <p>10 please?</p> <p>11 MR. OLSON: Will you let me get it out?</p> <p>12 MR. KEALEY: I did. And the document</p> <p>13 speaks for itself. That's my objection.</p> <p>14 MR. OLSON: Why don't you wait until I</p> <p>15 ask it, and then you're free to make that.</p> <p>16 Q Dr. Armstrong, this document doesn't</p> <p>17 say under all management systems and with all</p> <p>18 genetic stocks beak trimming is recommended; does</p> <p>19 it?</p> <p>20 <b>A The document speaks for itself.</b></p> <p>21 Q And it doesn't say that; does it?</p> <p>22 <b>A The document speaks for itself.</b></p>
<p style="text-align: right;">219</p> <p>1 Q But actually the next sentence says,</p> <p>2 "However, under certain management systems and</p> <p>3 with some genetic stocks, beak trimming is</p> <p>4 recommended." Right?</p> <p>5 <b>A Right.</b></p> <p>6 Q This document doesn't say, and the</p> <p>7 others aren't going to say it either, that all</p> <p>8 management systems or all genetic stocks require</p> <p>9 beak trimming; does it?</p> <p>10 MS. SUMNER: Objection.</p> <p>11 MR. KEALEY: Objection to form.</p> <p>12 <b>A What I can tell you is --</b></p> <p>13 Q No, no. I'm asking what the document</p> <p>14 says.</p> <p>15 MR. KEALEY: No. You said and all</p> <p>16 other documents aren't going to say it either. I</p> <p>17 have no idea what you're talking about.</p> <p>18 MR. OLSON: Well, let me withdraw.</p> <p>19 Q This document doesn't say --</p> <p>20 <b>A And I could probably go back on my</b></p> <p>21 <b>computer --</b></p> <p>22 MR. KEALEY: Just wait until there's a</p>	<p style="text-align: right;">221</p> <p>1 Q Right. And what the document says is</p> <p>2 under certain management systems and with some</p> <p>3 genetic stocks beak trim is recommended; right?</p> <p>4 <b>A That's what the document says, but the</b></p> <p>5 <b>discussion in the committee and the general</b></p> <p>6 <b>consensus then and today is that beak trimming is</b></p> <p>7 <b>required for almost -- required for all</b></p> <p>8 <b>confinement systems. And if people choose not to</b></p> <p>9 <b>beak trim, they're going to have to deal with</b></p> <p>10 <b>mortality.</b></p> <p>11 Q And do you find it odd --</p> <p>12 <b>A That's the consensus of the scientists.</b></p> <p>13 MR. KEALEY: You need to let the</p> <p>14 witness finish.</p> <p>15 <b>A And it also -- what's important, with</b></p> <p>16 <b>all the documents leading up, recommendations, if</b></p> <p>17 <b>you look at the recommendations at 331902 --</b></p> <p>18 Q Okay. What's the first one?</p> <p>19 <b>A The first one says where possible,</b></p> <p>20 <b>producers should select genetic stocks known to</b></p> <p>21 <b>require little or no beak trimming.</b></p> <p>22 Q And that --</p>

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<p style="text-align: right;">222</p> <p>1       <b>A</b> That is -- that is our way of pushing  2       the industry to doing this. Because at the time,  3       from a practical perspective, caged birds  4       required beak trimming from a welfare  5       perspective. Hands down. It was a mistake that  6       we didn't make that more clear in the document.  7       But I can tell you without equivocation that's  8       how the committee felt and, I would assume, still  9       feels today.</p> <p>10       <b>Q</b> The first recommendation of the  11       committee with regard to beak trimming was that,  12       where possible, producers should select genetic  13       stocks known to require little or no beak  14       trimming; right?</p> <p>15       <b>A</b> That's correct. That and --</p> <p>16       <b>Q</b> That was the most important of the  17       recommendations?</p> <p>18       <b>A</b> No, it was the first recommendation  19       because we wanted to get the committee and -- we  20       wanted the producers and the companies that  21       produced the hens to understand that that is a  22       goal.</p>	<p style="text-align: right;">224</p> <p>1       <b>A</b> Because --</p> <p>2       <b>Q</b> Hold on. Let me ask the question --</p> <p>3       <b>A</b> Yes, okay.</p> <p>4       <b>Q</b> -- Dr. Armstrong, that beak trimming  5       was only recommended under certain management  6       systems and with some genetic stocks?</p> <p>7       <b>A</b> I cannot speak to the exact wording,  8       but I can tell you that the clear impetus for the  9       committee in this document was to send the  10       message to the breeding companies and the  11       industry that selection for behavior is important  12       and a goal for the future.</p> <p>13       <b>Q</b> And do you know whether --</p> <p>14       <b>A</b> No equivocation in my mind about that.</p> <p>15       <b>Q</b> Do you know whether UEP as part of the  16       UEP certified program ever in any way required a  17       single producer to do anything to select genetic  18       stocks that would not require beak trimming of  19       baby hens?</p> <p>20       MS. SUMNER: Objection.</p> <p>21       <b>A</b> I have never -- I have not known UEP to  22       influence breeding. The UEP members would as</p>
<p style="text-align: right;">223</p> <p>1       There's no equivocation among the  2       scientists on our committee that would say you  3       could have a caged system with the genetics at  4       the time this was written that you would not beak  5       trim. It would be a welfare nightmare.</p> <p>6       <b>Q</b> But --</p> <p>7       <b>A</b> Would have been at that time.</p> <p>8       <b>Q</b> I'm trying not to interrupt you. I  9       apologize.</p> <p>10       But, Dr. Armstrong, in the document  11       that the committee actually generated, that was  12       vetted by all the members of the committee --</p> <p>13       <b>A</b> That's correct.</p> <p>14       <b>Q</b> -- it doesn't say anywhere that beak  15       trimming is required for all hens in cages; does  16       it?</p> <p>17       <b>A</b> No. Because it was generally  18       understood and common knowledge that anyone that  19       understood production knew that in a caged system  20       you beak trimmed or you were foolish.</p> <p>21       <b>Q</b> But why does it say in this document,  22       sir --</p>	<p style="text-align: right;">225</p> <p>1       individual purchasers of strains. I'm not aware  2       they -- and I'm really not an expert in the  3       supply -- supply chain of the -- of hens, other  4       than having visited Hy-Line and my work on the  5       committee.</p> <p>6       <b>Q</b> Let me try this again, but first just  7       nomenclature. At one time this program was  8       called -- the UEP program was called the Animal  9       Care Certified program; is that right?</p> <p>10       <b>A</b> That's correct.</p> <p>11       <b>Q</b> And then at a certain point that was  12       changed to the UEP Certified program; correct?</p> <p>13       <b>A</b> That's correct.</p> <p>14       <b>Q</b> And do you know why?</p> <p>15       <b>A</b> I don't know all the details, but I  16       know there were -- there were complaints. And it  17       was changed due to outside interference -- or  18       discussions. Trade --</p> <p>19       <b>Q</b> Do you know whether --</p> <p>20       <b>A</b> -- trade commission or something of  21       that nature.</p> <p>22       <b>Q</b> The Federal Trade Commission, are you</p>



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<p style="text-align: right;">226</p> <p>1 familiar with that body?</p> <p>2 <b>A I'm familiar with that, and I know that</b></p> <p>3 <b>happened, but I don't have the details.</b></p> <p>4 Q And what happened is the Federal Trade</p> <p>5 Commission --</p> <p>6 MR. KEALEY: Questions, please,</p> <p>7 counsel.</p> <p>8 Q -- thought that calling the program an</p> <p>9 animal care program was deceptive; is that right?</p> <p>10 MR. KEALEY: That's not a question.</p> <p>11 MS. SUMNER: Objection.</p> <p>12 MR. KEALEY: That's an argument. Ask a</p> <p>13 question, please.</p> <p>14 Q Do you know whether the Federal Trade</p> <p>15 Commission was concerned that calling the program</p> <p>16 an animal care program was deceptive?</p> <p>17 MR. KEALEY: Object to the question as</p> <p>18 argumentative. Lacks foundation. If you have</p> <p>19 evidence that you can establish this witness's</p> <p>20 knowledge of the Federal Trade Commission's state</p> <p>21 of mind, I'd ask --</p> <p>22 <b>A I'm not knowledgeable of the details --</b></p>	<p style="text-align: right;">228</p> <p>1 you, Steig. And I don't mean that to sound like</p> <p>2 an instructor and I'm going to go into 50</p> <p>3 minutes. But changing behavior and changing</p> <p>4 strains of birds takes years and years. The</p> <p>5 paper that is quoted by Craig and Muir took many</p> <p>6 years to conduct. It was one study. And the</p> <p>7 entire situation was not meant to be that</p> <p>8 industry would follow that.</p> <p>9 <b>So what the committee wanted to do was</b></p> <p>10 <b>encourage the industry to implement that</b></p> <p>11 <b>selection, and it would be years. Once -- I can</b></p> <p>12 <b>assure you that once strains were available that</b></p> <p>13 <b>did not require beak trimming, the UEP scientific</b></p> <p>14 <b>advisory committee would -- would consider and</b></p> <p>15 <b>say use those strains.</b></p> <p>16 <b>So you're -- you're condensing</b></p> <p>17 <b>something that takes years into something that is</b></p> <p>18 <b>there, and the clear message that we were trying</b></p> <p>19 <b>to send -- not well written I don't think at that</b></p> <p>20 <b>time -- and the reason we put it first on the</b></p> <p>21 <b>list is that we wanted to send a message to the</b></p> <p>22 <b>breeders and the companies that this is a big</b></p>
<p style="text-align: right;">227</p> <p>1 THE REPORTER: Wait a minute, wait a</p> <p>2 minute. Please. Please. Federal Trade</p> <p>3 Commission's state of mind --</p> <p>4 MR. KEALEY: -- I'd ask you to please</p> <p>5 lay your foundation.</p> <p>6 Q I'm just asking if you know what the</p> <p>7 Federal Trade Commission's concern was. Do you</p> <p>8 know?</p> <p>9 <b>A I told you what I knew. That's all I</b></p> <p>10 <b>know.</b></p> <p>11 Q Okay. So whatever -- let's just call</p> <p>12 it the UEP Certified program. My question is at</p> <p>13 any time over the course of that program, do you</p> <p>14 know whether UEP required the certified members</p> <p>15 of the program to do anything, to take any step,</p> <p>16 to make any effort to develop genetic stocks that</p> <p>17 would not require the painful beak trimming of</p> <p>18 baby hens?</p> <p>19 MS. SUMNER: Objection.</p> <p>20 <b>A There's a fundamental flaw in your</b></p> <p>21 <b>question. And it is a fundamental flaw that --</b></p> <p>22 <b>let me -- let me take a moment and explain it to</b></p>	<p style="text-align: right;">229</p> <p>1 <b>deal.</b></p> <p>2 Q Right. From the standpoint of animal</p> <p>3 welfare, it would be a big deal not to have to</p> <p>4 beak trim. Correct?</p> <p>5 <b>A Only if the birds didn't kill each</b></p> <p>6 <b>other.</b></p> <p>7 Q Right.</p> <p>8 <b>A And that -- those strains in cage</b></p> <p>9 <b>systems don't exist.</b></p> <p>10 Q But --</p> <p>11 <b>A They will kill each other, and animal</b></p> <p>12 <b>welfare will be very negative if you do not beak</b></p> <p>13 <b>trim the birds today.</b></p> <p>14 Q But the reason why the first</p> <p>15 recommendation was develop genetic stocks that</p> <p>16 don't require beak trimming was because that</p> <p>17 would be a great advance from an animal welfare</p> <p>18 perspective?</p> <p>19 <b>A And the committee agreed with that --</b></p> <p>20 Q Can you just answer the question,</p> <p>21 please?</p> <p>22 MR. KEALEY: He was answering the</p>

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<p style="text-align: right;">230</p> <p>1 question, counsel. And we're awfully close to a 2 boundary line here. You are not in court. You 3 are askings questions of the witness about his 4 personal knowledge. Please settle down. Please 5 slow down. Please stop talking over the witness. 6 Are we understood on that? 7 MR. OLSON: Well, I don't believe I'm 8 doing any of those things. I just want to ask 9 him -- 10 MR. KEALEY: I do -- I do believe you 11 are. You're on videotape while you're doing it. 12 So please dial it back. 13 MR. OLSON: Can I ask the question 14 again? 15 Q The question is this: The reason why 16 the first recommendation with regard to beak 17 trimming was put in this document was because 18 developing and using genetic stocks that don't 19 require beak trimming would be a great advance 20 from an animal welfare perspective; correct? 21 A That is correct. But the committee 22 recognized that those strains did not exist at</p>	<p style="text-align: right;">232</p> <p>1 Q All right. So let's move on to the 2 housing -- housing space allowances and 3 environment section. There's a background, and 4 then I think I want to start in the literature 5 review section, particularly where it summarizes 6 the research on space allowances, with some 7 bullets. Do you see that? 8 A Yes, I do. 9 Q And would it be fair to say those 10 bullets reflect the state of scientific teaching 11 on the space allowance issues as of this time, 12 May 2000? 13 MS. SUMNER: Objection to the form. 14 A This -- the review of this was very 15 lengthy. These points would summarize the major 16 points at that time. 17 Q All right. And I'll try to be very 18 selective so we can move through this. If you 19 look at the fourth bullet, the one that starts 20 "Measurement of white leghorn hens"; do you see 21 that? 22 A Correct.</p>
<p style="text-align: right;">231</p> <p>1 the time, and it would take years for that to 2 happen. That's why we pushed it in this manner. 3 Q And this is what I'm trying to get 4 clarity on. And even something that takes years 5 has to be started; right? 6 A Which is what we did. 7 Q Okay. And my question is, do you know 8 whether under the UEP Certified program UEP ever 9 required of the producers who were certified 10 under the program to do anything to advance that 11 goal of using genetic stocks that did not require 12 beak trimming? 13 MS. SUMNER: Objection to the form. 14 A No, because it would be very 15 impractical. The most UEP could do is -- I think 16 which is profound, they established a 17 science-based committee which told the industry 18 you need to go there. It's like telling the 19 automotive industry that we want hydrogen cars 20 tomorrow. That's equivalent to it, Steig. And 21 why is GM not selling hydrogen cars today? 22 Because they're not practical.</p>	<p style="text-align: right;">233</p> <p>1 Q Now the white leghorn are the smaller 2 size hens; right? 3 A They're the most prevalent, yes. 4 Q It says, "Measurements of white leghorn 5 hens show that they require about 65 to 83 square 6 inches, average 74, to perform even the most 7 basic behaviors, standing comfortably and 8 resting." That was of the scientific teaching at 9 the time; right? 10 A That was one point you're pulling out 11 of context, that's correct. 12 Q And from an animal welfare perspective, 13 is it humane to permit a hen to perform the most 14 basic behaviors such as standing comfortably and 15 resting? 16 A The committee would say yes. 17 Q And would the committee also say that 18 from an animal welfare perspective it would be 19 a -- humane to permit a hen to perform other 20 behaviors like wing flapping? 21 A When you get into the behaviors of wing 22 flapping, that's where there is debate. And it</p>

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<p style="text-align: right;">234</p> <p>1 also gets into the realm of practicality and it</p> <p>2 also gets into other factors besides wing</p> <p>3 flapping. So if you put birds in a system where</p> <p>4 they can more freely express wing flapping,</p> <p>5 perching, there are tradeoffs in other areas that</p> <p>6 are related to welfare, such as mortality.</p> <p>7 That's why studies are ongoing to try to better</p> <p>8 understand that.</p> <p>9 Q If you look at the last bullet, the</p> <p>10 last sentence says "four inches of feeder space</p> <p>11 per hen is required for all hens to have free</p> <p>12 access to the feeder." Do you see that?</p> <p>13 A Yes, that was our thinking at that</p> <p>14 time.</p> <p>15 Q All right, you can turn the page.</p> <p>16 All right. And now we're on the</p> <p>17 committee conclusions; right?</p> <p>18 A Yes.</p> <p>19 Q And if you look at the second full</p> <p>20 paragraph it says, "There is overwhelming</p> <p>21 evidence that hen welfare in conventional cages</p> <p>22 is impaired when hens are given space allowances</p>	<p style="text-align: right;">236</p> <p>1 a preliminary stage" -- strike that. I'll move</p> <p>2 on from that one.</p> <p>3 All right. Now let's look at the next</p> <p>4 page, the recommendations for caged hens; right?</p> <p>5 These -- these were the scientific</p> <p>6 advisory committee's recommendations for caged</p> <p>7 hens per the UEP guidelines; correct?</p> <p>8 A Correct.</p> <p>9 Q Number one says "Cage configurations</p> <p>10 should be such that manure from birds in upper</p> <p>11 cage levels does not drop directly on birds in</p> <p>12 lower level cages"; right?</p> <p>13 A Yes.</p> <p>14 Q And would it be fair to say this is one</p> <p>15 of those baseline, minimum standards of animal</p> <p>16 welfare?</p> <p>17 A Yes. The committee felt strongly about</p> <p>18 that.</p> <p>19 Q And if hens are sitting in a henhouse</p> <p>20 and manure is dropping directly on them from</p> <p>21 cages above them, that's not complying with even</p> <p>22 basic standards of animal welfare?</p>
<p style="text-align: right;">235</p> <p>1 of less than 67 to 86 square inches, average</p> <p>2 about 72 square inches, per bird." Was that a</p> <p>3 true statement?</p> <p>4 A Yes.</p> <p>5 Q And it continues, "And also evidence</p> <p>6 that hen welfare is impaired when feeder space</p> <p>7 allowances are less than four inches per bird."</p> <p>8 A So --</p> <p>9 Q Was that also a true statement?</p> <p>10 A The 67 to 86 was a true statement then,</p> <p>11 and it is a true statement now. The four inches</p> <p>12 per bird for feeder space was the committee's</p> <p>13 statement at that time, but it's no longer our</p> <p>14 statement.</p> <p>15 Q Right. But at the time --</p> <p>16 A That's correct.</p> <p>17 Q Okay. Now, the next paragraph talks</p> <p>18 about -- can we call them enriched or modified</p> <p>19 cages?</p> <p>20 A Yeah. You can use those words</p> <p>21 interchangeably as far as I'm concerned.</p> <p>22 Q All right. And it says "Research is at</p>	<p style="text-align: right;">237</p> <p>1 A That's one of the many things we</p> <p>2 discussed, we observed as a problem in our tours,</p> <p>3 and thus it's listed as a recommendation.</p> <p>4 Q Right. And you -- in fact you, on your</p> <p>5 tours, you went to henhouses and saw cage systems</p> <p>6 where manure from the higher level hens was</p> <p>7 dropping directly on the lower level hens; right?</p> <p>8 A Correct.</p> <p>9 Q And earlier today you talked about how</p> <p>10 the committee just thought it was intolerable for</p> <p>11 there to be a system where some hens are being</p> <p>12 treated humanely but others are not; do you</p> <p>13 recall that?</p> <p>14 A Yes. That was in the context of</p> <p>15 different flocks owned by the same person.</p> <p>16 Q Right.</p> <p>17 A Person or entity.</p> <p>18 Q And does that apply here as well to</p> <p>19 this principle?</p> <p>20 MR. KEALEY: Objection to form. Lack</p> <p>21 of foundation.</p> <p>22 A I've already stated that we don't want</p>

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<p style="text-align: right;">238</p> <p>1 <b>manure to drop on any birds.</b></p> <p>2 Q Right. And if -- okay. I'll move on.</p> <p>3 I think we've covered some of these</p> <p>4 others. Let's see. All right. Let's go to</p> <p>5 molting.</p> <p>6 Dr. Armstrong, did the UEP certified</p> <p>7 program put an end to cage systems where manure</p> <p>8 from the higher level hens could drop directly on</p> <p>9 hens below them?</p> <p>10 MS. SUMNER: Objection.</p> <p>11 <b>A I have no basis to answer that program.</b></p> <p>12 <b>I can only tell you what our scientific</b></p> <p>13 <b>recommendations are. I haven't surveyed the</b></p> <p>14 <b>industry.</b></p> <p>15 Q All right. So molting, there's</p> <p>16 background, literature review. I'd like to go to</p> <p>17 sort of under the Induced Molting. There's a</p> <p>18 paragraph at the bottom that starts -- that says</p> <p>19 "Extended feed withdrawal."</p> <p>20 <b>A Yes.</b></p> <p>21 Q It says, "Extended feed withdrawal</p> <p>22 causes an increase in mortality during the feed</p>	<p style="text-align: right;">240</p> <p>1 right?</p> <p>2 <b>A That's correct.</b></p> <p>3 Q Right. And those are not good things</p> <p>4 from an animal welfare perspective?</p> <p>5 <b>A Mortality goes up, welfare goes down.</b></p> <p>6 <b>Exactly.</b></p> <p>7 Q There's more here, but to cut to the</p> <p>8 chase, the conclusion was that this practice does</p> <p>9 raise some concerns?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And the industry should explore</p> <p>12 alternatives?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And until -- and then it says "until</p> <p>15 such time that these alternatives are available,</p> <p>16 the shortest period of feed withdrawal possible</p> <p>17 should be used for molting." Right?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And that was the committee's view of</p> <p>20 the baseline animal welfare standard at the time;</p> <p>21 correct?</p> <p>22 <b>A That was the committee's view during a</b></p>
<p style="text-align: right;">239</p> <p>1 withdrawal period." Do you see that?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And there's some statistics. It would</p> <p>4 be fair to say this was the teaching of science</p> <p>5 at the time?</p> <p>6 <b>A Yes.</b></p> <p>7 Q All right. And so for -- during the</p> <p>8 first week -- and just to be clear, what we're</p> <p>9 talking about is depriving the hen of food;</p> <p>10 correct?</p> <p>11 <b>A Yes. It's a -- it's a total feed</b></p> <p>12 <b>withdrawal.</b></p> <p>13 Q Some call it starving the hen?</p> <p>14 <b>A Mm-hmm.</b></p> <p>15 Q Now, and this says during the first</p> <p>16 week there is a doubling of mortality that occurs</p> <p>17 during the first week of food deprivation.</p> <p>18 Right?</p> <p>19 <b>A That's what the document indicates,</b></p> <p>20 <b>yes.</b></p> <p>21 Q And then it says during the second week</p> <p>22 of food deprivation mortality doubles again;</p>	<p style="text-align: right;">241</p> <p>1 <b>transition. We established that -- what the</b></p> <p>2 <b>baseline would be. The baseline, getting to the</b></p> <p>3 <b>point of being humane, would be non-feed</b></p> <p>4 <b>withdrawal.</b></p> <p>5 Q Right.</p> <p>6 <b>A This is an implementation point that</b></p> <p>7 <b>you're getting at, not a scientific</b></p> <p>8 <b>recommendation.</b></p> <p>9 Q Okay. And but -- but it would be fair</p> <p>10 to say that the committee said to the extent this</p> <p>11 is going to happen, it should -- the shortest</p> <p>12 period of time possible should be used?</p> <p>13 <b>A Right. Again, we -- whether it was</b></p> <p>14 <b>housing or others, we said we want you to</b></p> <p>15 <b>implement these recommendations as soon as</b></p> <p>16 <b>possible. But we at the beginning, a priority,</b></p> <p>17 <b>said we're not going to get into discussions of</b></p> <p>18 <b>timing. We'll respond, we'll advise you, we'll</b></p> <p>19 <b>help you, and we're going to constantly tell you</b></p> <p>20 <b>to move as fast as possible as reasonable.</b></p> <p>21 <b>Molting took a little while. Beak</b></p> <p>22 <b>trimming is going to take a long time. And</b></p>

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<p style="text-align: right;">242</p> <p>1 <b>space, they built their own implementation time</b></p> <p>2 <b>lines. We only said "keep going."</b></p> <p>3 Q I understand. And just for a moment I</p> <p>4 want to put aside the idea of moving to not using</p> <p>5 forced molting at all and just talk about the</p> <p>6 recommendations during this interim period when</p> <p>7 the committee recognized that there would still</p> <p>8 be some forced molting.</p> <p>9 <b>A Correct.</b></p> <p>10 Q Fair enough? Okay.</p> <p>11 <b>A Right.</b></p> <p>12 Q And during this interim period the</p> <p>13 recommendation was if you're going to do it, use</p> <p>14 the shortest period of time possible; correct?</p> <p>15 <b>A Correct.</b></p> <p>16 Q And do you know -- okay. And then --</p> <p>17 <b>A So we were trying to mitigate the</b></p> <p>18 <b>negative impacts, but we knew we couldn't</b></p> <p>19 <b>eliminate them.</b></p> <p>20 Q And there was -- there was scientific</p> <p>21 evidence at this time that indicated a four- to</p> <p>22 six-day feed withdrawal period would -- well,</p>	<p style="text-align: right;">244</p> <p>1 <b>A That's --</b></p> <p>2 Q -- there is a problem?</p> <p>3 <b>A That's exactly right. And that's why</b></p> <p>4 <b>we didn't get into timeline. Because I can tell</b></p> <p>5 <b>an animal rights activist what the science means,</b></p> <p>6 <b>and I can tell a producer what the science means,</b></p> <p>7 <b>and I've often said I'm an equal opportunity</b></p> <p>8 <b>offender because I frankly made both of those</b></p> <p>9 <b>parties mad because I didn't waver on what the</b></p> <p>10 <b>science would say.</b></p> <p>11 Q And -- and from the perspective of</p> <p>12 science and animal welfare, was it compatible</p> <p>13 with what the science said about animal welfare</p> <p>14 at this time in 2000 to starve a hen for two</p> <p>15 weeks?</p> <p>16 MR. KEALEY: Objection to the form of</p> <p>17 the question.</p> <p>18 <b>A It was incompatible with a change that</b></p> <p>19 <b>would result in significant animal welfare to</b></p> <p>20 <b>expect the industry to do that overnight. That's</b></p> <p>21 <b>why we viewed practicality as -- as an issue.</b></p> <p>22 <b>And that's why we didn't get into trying to tell</b></p>
<p style="text-align: right;">243</p> <p>1 strike that.</p> <p>2 Let me ask you this question.</p> <p>3 <b>A Mm-hmm.</b></p> <p>4 Q Do you -- do you know, Dr. Armstrong,</p> <p>5 whether the UEP certified program, while it</p> <p>6 permitted forced molting, placed any requirement</p> <p>7 on producers to only molt for the shortest period</p> <p>8 of time possible?</p> <p>9 <b>A I don't recall the details of the audit</b></p> <p>10 <b>system. I simply know that during this period of</b></p> <p>11 <b>time we had significant producer pushback against</b></p> <p>12 <b>eliminating feed withdrawal, and we were trying</b></p> <p>13 <b>to push the industry in hoping that they would</b></p> <p>14 <b>move as fast as possible. See, there were many</b></p> <p>15 <b>producers that looked me in the eye and said</b></p> <p>16 <b>"There's nothing wrong with feed withdraw. You</b></p> <p>17 <b>guys are nuts." And --</b></p> <p>18 Q That's not --</p> <p>19 <b>A -- and that's the environment we were</b></p> <p>20 <b>working in.</b></p> <p>21 Q But that's not what the science said.</p> <p>22 The science said --</p>	<p style="text-align: right;">245</p> <p>1 <b>the industry when they would do things.</b></p> <p>2 Q All right. Now, let's just move</p> <p>3 forward in the timeline --</p> <p>4 <b>A But I will -- but I will also tell you</b></p> <p>5 <b>that I think the committee was pleased with their</b></p> <p>6 <b>action. They immediately spent some money and</b></p> <p>7 <b>refined the feed withdrawal --</b></p> <p>8 <b>non-feed-withdrawal methods, because it wasn't</b></p> <p>9 <b>clear, or we would have said implement such a</b></p> <p>10 <b>program at the time.</b></p> <p>11 <b>(Deposition Exhibit 19 was marked for</b></p> <p>12 <b>identification.)</b></p> <p>13 Q All right. I've handed you what we've</p> <p>14 marked as Armstrong 19. And this is Bates</p> <p>15 stamped UE0153203 through 204. And can you</p> <p>16 identify this as minutes of the UEP Producer</p> <p>17 Committee for Animal Welfare of May 15th, 2000?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And you attended this meeting; correct?</p> <p>20 <b>A Yes. I'm listed as an -- a guest. A</b></p> <p>21 <b>consultant. I'm listed as a consultant.</b></p> <p>22 Q And I believe you testified this</p>

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<p style="text-align: right;">246</p> <p>1 morning that you were essentially the liaison to</p> <p>2 the producer committee --</p> <p>3 <b>A Mm-hmm.</b></p> <p>4 <b>Q --</b> and there were also producers that</p> <p>5 were liaison to the scientific committee?</p> <p>6 <b>A That's correct. And I also mentioned</b></p> <p>7 <b>that others would go with me from time to time,</b></p> <p>8 <b>and Joy Mench, Janice Swanson, Don Bell were also</b></p> <p>9 <b>there, and Steve Reger.</b></p> <p>10 MR. KEALEY: Yeah.</p> <p>11 <b>A Is that a Hy-Line guy? I'm trying to</b></p> <p>12 <b>think. I don't know. Anyway.</b></p> <p>13 <b>Q In any way --</b> in any case, there were</p> <p>14 liaisons back and forth between the two</p> <p>15 committees?</p> <p>16 <b>A That's correct. It was quite</b></p> <p>17 <b>iterative.</b></p> <p>18 <b>Q Now,</b> this refers to the committee</p> <p>19 reviewing the draft of the Humane Guidelines for</p> <p>20 U.S. Egg Laying Flocks. Do you know whether</p> <p>21 that's the draft that we just looked at?</p> <p>22 <b>A I don't know for sure, but I would</b></p>	<p style="text-align: right;">248</p> <p>1 <b>don't.</b></p> <p>2 <b>Q Do you see the reference to minor</b></p> <p>3 <b>changes being made to each component?</b></p> <p>4 <b>A I do.</b></p> <p>5 <b>Q Do you know what that's referring to?</b></p> <p>6 <b>A I do not.</b></p> <p>7 <b>Q Okay.</b></p> <p>8 <b>A I do not. All I can repeat is what I</b></p> <p>9 <b>said earlier about how things happened.</b></p> <p>10 <b>Q Okay. You can put that aside.</b></p> <p>11 Let me hand you what we'll mark</p> <p>12 Armstrong 20. This was previously Gregory 23 and</p> <p>13 Pope 9. And I actually can't read the Bates</p> <p>14 stamp, but those are the exhibits for people to</p> <p>15 find it.</p> <p>16 (Deposition Exhibit 20 was marked for</p> <p>17 identification.)</p> <p>18 <b>Q And do you see, this is also titled UEP</b></p> <p>19 <b>Animal Welfare Committee Meeting, May 15th, 2000.</b></p> <p>20 <b>Do you see that?</b></p> <p>21 <b>A I do.</b></p> <p>22 <b>Q Same date as the last document?</b></p>
<p style="text-align: right;">247</p> <p>1 <b>assume so. This was the -- it would have to be.</b></p> <p>2 <b>I think this is the earliest draft.</b></p> <p>3 <b>Q Okay. And then it says minor changes</b></p> <p>4 <b>were made to each component of the guidelines; do</b></p> <p>5 <b>you see that?</b></p> <p>6 <b>A Yes.</b></p> <p>7 <b>Q So this is the UEP producer committee</b></p> <p>8 <b>making changes to each component of the</b></p> <p>9 <b>scientific advisory committee guidelines; right?</b></p> <p>10 MS. SUMNER: Objection to the form.</p> <p>11 <b>A I don't -- the producers, I don't know</b></p> <p>12 <b>what is exactly entailed here, but I can tell you</b></p> <p>13 <b>that producers did not change any scientific</b></p> <p>14 <b>guidelines on their own. If a producer had a</b></p> <p>15 <b>question about a guideline -- case in point, four</b></p> <p>16 <b>inches of feeder space, because they said</b></p> <p>17 <b>practically that doesn't matter. I took it back</b></p> <p>18 <b>to the committee, we would discuss it. The</b></p> <p>19 <b>committee had full control on what was changed in</b></p> <p>20 <b>the scientific guidelines.</b></p> <p>21 <b>Q Do you recall this meeting?</b></p> <p>22 <b>A I -- I don't recall it in detail. I</b></p>	<p style="text-align: right;">249</p> <p>1 <b>A Mm-hmm.</b></p> <p>2 <b>Q Do you recall this meeting of the</b></p> <p>3 <b>animal welfare committee meeting?</b></p> <p>4 <b>A I do not recall this specific document.</b></p> <p>5 <b>Q Now, if the prior document, Armstrong</b></p> <p>6 <b>19, refers to the committee meeting three times</b></p> <p>7 <b>over the course of several days around</b></p> <p>8 <b>May 15th -- do you see that?</b></p> <p>9 <b>A Yes.</b></p> <p>10 <b>Q Do you know whether you attended all</b></p> <p>11 <b>three meetings?</b></p> <p>12 <b>A That committee, animal welfare?</b></p> <p>13 <b>Q Right.</b></p> <p>14 <b>A I do not recall. But I can almost</b></p> <p>15 <b>promise I wasn't there a hundred percent of the</b></p> <p>16 <b>time. And then there were times when I was there</b></p> <p>17 <b>when I was, you know, doing emails sitting in the</b></p> <p>18 <b>back of the room waiting for my turn.</b></p> <p>19 <b>Q Okay. So this question -- this next</b></p> <p>20 <b>question might be pretty easy, but looking at</b></p> <p>21 <b>Armstrong 20 now --</b></p> <p>22 <b>A This one didn't get a sticker. Is this</b></p>



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<p style="text-align: right;">250</p> <p>1 <b>Armstrong 20?</b></p> <p>2 Q Why don't you switch with your counsel.</p> <p>3 <b>A Oh. Okay. That says 20. That says</b></p> <p>4 <b>19. Okay, good. Got it. 20.</b></p> <p>5 Q All right. Do you see there's a</p> <p>6 heading that says Cage Space Allowance</p> <p>7 Considerations?</p> <p>8 <b>A Yes, I do.</b></p> <p>9 Q There's a number of points under that?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Do you see the one that says</p> <p>12 "increasing space allowances would have two major</p> <p>13 effects"? At the bottom.</p> <p>14 <b>A Yes.</b></p> <p>15 Q Point 5?</p> <p>16 <b>A I do see that.</b></p> <p>17 Q One of them is a positioning of the</p> <p>18 industry as a pro welfare step. Do you see that?</p> <p>19 <b>A I do.</b></p> <p>20 Q Do you recall discussions about that?</p> <p>21 <b>A A pro welfare step -- I don't recall</b></p> <p>22 <b>the specifics of this meeting, but absolutely.</b></p>	<p style="text-align: right;">252</p> <p>1 September 2000 recommendations for UEP animal</p> <p>2 welfare guidelines --</p> <p>3 <b>A Got it.</b></p> <p>4 Q -- submitted by the committee. So now</p> <p>5 there's been this May document that was</p> <p>6 discussed. There's a reference to some minor</p> <p>7 changes being made, and now we're at</p> <p>8 September 2000. This is the document that you</p> <p>9 discussed earlier as sort of the more formal</p> <p>10 document at this time?</p> <p>11 <b>A For the -- at the time.</b></p> <p>12 MS. SUMNER: Objection to the form.</p> <p>13 Q And I'm just --</p> <p>14 MS. SUMNER: Misstates testimony --</p> <p>15 prior testimony.</p> <p>16 Q That was just only a table-setting</p> <p>17 question, but we're on --</p> <p>18 <b>A Okay.</b></p> <p>19 Q -- the same page; right?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Okay.</p> <p>22 MS. SUMNER: Objection.</p>
<p style="text-align: right;">251</p> <p>1 <b>It's in my writings everywhere.</b></p> <p>2 Q All right. And then sub-point B says</p> <p>3 "an increase in space allowance would inevitably</p> <p>4 reduce the layer population and thereby reduce</p> <p>5 the surplus production problems affecting the</p> <p>6 industry over the past twenty years"; do you see</p> <p>7 that?</p> <p>8 <b>A I do.</b></p> <p>9 Q Do you recall that discussion?</p> <p>10 <b>A I do not.</b></p> <p>11 Q Do you recall at any time being privy</p> <p>12 to discussions about that type of thing?</p> <p>13 <b>A No. Our -- in our committee -- and</b></p> <p>14 <b>I -- and I may have and I don't recall, but I can</b></p> <p>15 <b>tell you that our committee -- our committee</b></p> <p>16 <b>would walk out on me if we started talking about</b></p> <p>17 <b>that from a -- from a scientific perspective.</b></p> <p>18 Q All right. Now, if you pull out</p> <p>19 Exhibit 2, I think we're now up to</p> <p>20 September 2000. You might have even already</p> <p>21 pulled it out.</p> <p>22 And Exhibit 2 should be the</p>	<p style="text-align: right;">253</p> <p>1 Q Now, let's just look to see the</p> <p>2 differences between the May and September.</p> <p>3 <b>A That would -- that would be interesting</b></p> <p>4 <b>to revise my memory of that.</b></p> <p>5 Q Yeah. Okay. So if you look at the --</p> <p>6 <b>A Revive, I should say.</b></p> <p>7 Q -- Exhibit 8 was the May.</p> <p>8 <b>A I gotcha.</b></p> <p>9 Q Okay. There's your mission statement.</p> <p>10 <b>A Okay.</b></p> <p>11 Q All right. Generally looks the same.</p> <p>12 And then -- then it looks like the list of</p> <p>13 members was taken off. Is that right?</p> <p>14 <b>A Yeah. I noticed that this morning.</b></p> <p>15 Q Yeah. And do you know why it was that</p> <p>16 the list of members of the scientific advisory</p> <p>17 committee, including Barrie Wilcox, was taken</p> <p>18 off?</p> <p>19 <b>A In May?</b></p> <p>20 MS. SUMNER: Objection.</p> <p>21 Q In the September -- oh, sorry. Sorry,</p> <p>22 you're right.</p>

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<p style="text-align: right;">254</p> <p>1 MS. SUMNER: It's in the September one.  2 The gears switched.  3 MR. DAVIS: It's in your May one.  4 MR. OLSON: Right. So, sorry.  5 Q The September one -- I'm going to have  6 to have you compare now Armstrong 18 to --  7 <b>A Compare it to?</b>  8 Q -- Exhibit 2.  9 <b>A 18 compared to 2. Okay.</b>  10 Q Okay. So 18 has your mission  11 statement, then the listing of the members.  12 <b>A Correct.</b>  13 Q Barrie Wilcox listed as a member;  14 right?  15 <b>A Correct.</b>  16 Q Now if you look at Exhibit 2, there's  17 the listing of the members, but now Barrie Wilcox  18 is not listed as a member, he's listed under a  19 heading that says Support. True?  20 <b>A Correct.</b>  21 Q Who made that change; do you know?  22 <b>A I don't recall.</b></p>	<p style="text-align: right;">256</p> <p>1 committee should no longer be listed as a member?  2 <b>A I -- I may have, but I don't recall.</b>  3 <b>I --</b>  4 Q Okay.  5 <b>A There were so many conversations back</b>  6 <b>and forth.</b>  7 Q All right. You can put that aside.  8 Now let me hand you what we'll mark  9 Armstrong 21.  10 (Deposition Exhibit 21 was marked for  11 identification.)  12 Q This was previously Gregory 21. And  13 it's Bates stamped MFI0276310. And can you,  14 Dr. Armstrong, identify what this document is?  15 <b>A Yes. This is the -- must be pretty</b>  16 <b>close to the first draft of the producer -- well,</b>  17 <b>the document speaks for itself. Animal Husbandry</b>  18 <b>Guidelines for U.S. Egg Laying Flocks. I'm</b>  19 <b>trying to read it and get the context.</b>  20 Q Okay. Give it a brief scan, and you  21 might want to read that cover letter that starts  22 it off.</p>
<p style="text-align: right;">255</p> <p>1 Q All right. And then if you look at  2 Exhibit 2, the September 2000 version, would it  3 be fair to say your preamble -- or the preamble  4 is also gone?  5 <b>A That's correct.</b>  6 Q So that language that says this  7 committee was comprised of 6, 2, 1, 1, 1 egg  8 producer, also cut; right?  9 <b>A Yeah. And I -- I don't have a complete</b>  10 <b>recollection, but I remember -- I do remember</b>  11 <b>that the committee felt that the preamble really</b>  12 <b>didn't fit. I don't recall discussions about the</b>  13 <b>composition, I don't recall discussions about</b>  14 <b>members. I can tell you, I really wasn't worried</b>  15 <b>at the time whether a person was an ad hoc member</b>  16 <b>or ex-officio member. I knew that the science --</b>  17 <b>the science group on the committee was driving</b>  18 <b>things. That's all I can tell you. We weren't</b>  19 <b>sticklers how it was listed, from my perspective.</b>  20 Q Do you recall, Dr. Armstrong,  21 discussing with anyone at UEP at any time that  22 the producer member of the scientific advisory</p>	<p style="text-align: right;">257</p> <p>1 <b>A Okay.</b>  2 Q All right. And --  3 <b>A Can -- let me read it.</b>  4 Q Oh, sure. Just let us know when you're  5 done.  6 <b>A Okay.</b>  7 Q Okay. Now can you identify what this  8 document is?  9 <b>A I understand the document and the</b>  10 <b>contents, but I'm not -- I don't have a detailed</b>  11 <b>recollection of it from a contextual perspective.</b>  12 Q Well, let's look at the first page.  13 There's a cover letter from Gene Gregory.  14 <b>A Yes.</b>  15 Q Dated November 13, 2000. Do you see  16 that?  17 <b>A Yes.</b>  18 Q And do you see where he says, "We are  19 now pleased to share with you the completed  20 document of husbandry guidelines for the egg  21 industry"? Do you see that?  22 <b>A Yes.</b></p>

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<p style="text-align: right;">258</p> <p>1 Q Does that help identify this document?</p> <p>2 A Yes.</p> <p>3 Q Okay.</p> <p>4 A Yes.</p> <p>5 Q So this is the -- the scientific</p> <p>6 advisory committee had issued recommendations</p> <p>7 that we looked at before.</p> <p>8 A Mm-hmm.</p> <p>9 Q Now this is the first completed version</p> <p>10 of the producers' guidelines; correct?</p> <p>11 A Well, yeah, I mean I'm still -- I'm</p> <p>12 still not clear. It looks to me that -- yeah, I</p> <p>13 think this is the first presentation of the</p> <p>14 producer, because it has some of our language and</p> <p>15 it appears to be that.</p> <p>16 Q Okay. So if you look at Mr. Gregory's</p> <p>17 cover letter, at the bottom it says, "This road</p> <p>18 map does not demand immediate changes but does</p> <p>19 give producers an opportunity to be prepared when</p> <p>20 their customer wants changes." Do you see that?</p> <p>21 A I do.</p> <p>22 Q Do you have an understanding of what</p>	<p style="text-align: right;">260</p> <p>1 chairman of this committee, requesting that he</p> <p>2 personally select the most qualified persons</p> <p>3 available to assist him in this endeavor; do you</p> <p>4 see that?</p> <p>5 A I do.</p> <p>6 Q Would it have been more accurate to say</p> <p>7 that Donald Bell was selected by UEP as opposed</p> <p>8 to you personally?</p> <p>9 MS. SUMNER: Object to the form of the</p> <p>10 question.</p> <p>11 A I don't think that's an accurate</p> <p>12 statement. Because they made the recommendation.</p> <p>13 And I was talking with my advisers and I could</p> <p>14 have said no. Donald Bell was a very qualified</p> <p>15 and acceptable member. And in fact we knew that</p> <p>16 he would be someone that would be very much</p> <p>17 toward the status quo, and it's good to have a</p> <p>18 diverse viewpoint on a committee.</p> <p>19 There were no predetermined</p> <p>20 qualifications on the committee. He was</p> <p>21 recommended by UEP. I think Gene also</p> <p>22 recommended Scotti Hester too.</p>
<p style="text-align: right;">259</p> <p>1 that means?</p> <p>2 A I don't remember the exact context, but</p> <p>3 this is at a period of time when, you know,</p> <p>4 they're worried about people revolting because</p> <p>5 some people did not want these guidelines. This</p> <p>6 was -- this was -- this was a very touchy thing</p> <p>7 for the industry to move forward with these</p> <p>8 guidelines. And they were going day by day on</p> <p>9 whether the members would accept adding space and</p> <p>10 doing all these things. It was -- I think the</p> <p>11 industry was being very proactive.</p> <p>12 Q All right. Now if we turn a few pages</p> <p>13 in, do you see there's a heading that says</p> <p>14 Scientific Advisory Committee Members?</p> <p>15 A Yes. I see it.</p> <p>16 Q All right. And Barrie Wilcox is just</p> <p>17 not listed here at all; right?</p> <p>18 A I don't see him.</p> <p>19 Q And do you know why that is?</p> <p>20 A I -- I don't recall.</p> <p>21 Q And at the top it says United Egg</p> <p>22 Producers asked Dr. Jeffrey Armstrong to serve as</p>	<p style="text-align: right;">261</p> <p>1 Q And how about Mr. Wilcox? Who</p> <p>2 recommended him?</p> <p>3 A Barrie Wilcox was there because he was</p> <p>4 chair of the producer committee, if I remember</p> <p>5 correctly.</p> <p>6 Q All right. So if you look a few</p> <p>7 paragraphs in to the recommendations and</p> <p>8 guidelines, there's the housing and space</p> <p>9 allowance, the first one; do you see that?</p> <p>10 A I do.</p> <p>11 Q And then I want to look at the box that</p> <p>12 says Recommendations.</p> <p>13 A Yes.</p> <p>14 Q There's an intro and two sentences, and</p> <p>15 the second one says, "Variances due to</p> <p>16 unalterable features of existing equipment will</p> <p>17 be permitted for the useful life of that</p> <p>18 equipment." Do you see that?</p> <p>19 A I do.</p> <p>20 Q Was that something that the scientific</p> <p>21 advisory committee was responsible for?</p> <p>22 A No, but we were aware of -- we were</p>

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<p style="text-align: right;">262</p> <p>1 <b>aware of it, I assume. I don't recall the</b>  2 <b>specific discussions, but we reviewed this.</b>  3 Q Okay. But you don't recall the  4 discussions about that concept?  5 <b>A I recall the discussions in the broad</b>  6 <b>context about old equipment, and that barns, you</b>  7 <b>know, and facilities have a lifetime, and that it</b>  8 <b>would be very impractical to go (indicating)</b>  9 <b>replace the -- replace some of these cages.</b>  10 Q And would it be fair to say cages have  11 a lifetime that can span many years?  12 <b>A I'm not an expert on cage lifetime.</b>  13 <b>But yes, the longer the better.</b>  14 Q Right. Do you know, I mean 15, 20, 30,  15 50? Do you have any idea?  16 <b>A That's not in my expertise.</b>  17 Q Okay.  18 MR. OLSON: Okay. We can go ahead and  19 change tape. I might just have one or two more  20 questions on this.  21 THE VIDEOGRAPHER: We're going off the  22 record. The time is 2:13 p.m.</p>	<p style="text-align: right;">264</p> <p>1 identify that as an email you sent to Gene  2 Gregory, copying others, on January 6, 2002?  3 <b>A Yes.</b>  4 Q And who are the folks that you copied?  5 <b>A Those are the members of the scientific</b>  6 <b>advisory committee.</b>  7 Q And one of those is Bob Krouse; who is  8 that?  9 <b>A Bob was the ex officio member. He was</b>  10 <b>chair of the animal welfare committee at that</b>  11 <b>time.</b>  12 Q And so was that Mr. Krouse who took  13 over from Mr. Wilcox?  14 <b>A I assume so. I don't remember if there</b>  15 <b>was someone in between; we've had several.</b>  16 Q Fair enough. And have you reviewed  17 this email that you wrote?  18 <b>A Yeah. I looked at it again.</b>  19 Q Okay. The Subject is "Concerns from  20 the committee." Do you see that?  21 <b>A I do see that.</b>  22 Q And do you recall these concerns from</p>
<p style="text-align: right;">263</p> <p>1 (A recess was taken.)  2 THE VIDEOGRAPHER: This is the  3 beginning of Tape 5. The time is 4:30 -- no,  4 2:30 p.m. and we're back on the record.  5 (Deposition Exhibit 22 was marked for  6 identification.)  7 Q Dr. Armstrong, you can put that aside.  8 I'm handing you what we've marked Armstrong 22.  9 This is a document Bates stamped  10 UE0331187 through 1190. And it's a -- it's  11 actually two documents put together. And why  12 don't you just briefly review the document, and  13 then we will discuss it.  14 MS. SUMNER: Steig, I think it's three  15 documents together.  16 Q We're just going to walk through the  17 whole thing.  18 <b>A I've scanned them.</b>  19 Q Okay. So let's start at the back with  20 the oldest --  21 <b>A Okay.</b>  22 Q -- document. That's -- can you</p>	<p style="text-align: right;">265</p> <p>1 the committee?  2 <b>A I don't recall a lot more than</b>  3 <b>what's -- than what's here. There were numerous</b>  4 <b>times when the committee had concerns, and in</b>  5 <b>addition to being the chair I was sort of the</b>  6 <b>chief navigator and the negotiator-in-chief.</b>  7 Q Okay. And even after reviewing the  8 email, you don't recall what the concern was?  9 <b>A No. I -- the document stands for</b>  10 <b>itself. I -- I don't have knowledge -- I don't</b>  11 <b>recall much beyond what's here.</b>  12 Q Okay.  13 <b>A But I do -- I do understand the email,</b>  14 <b>yes.</b>  15 Q Can you explain for the record the  16 concern that you were expressing?  17 <b>A So, as I had alluded earlier, Janice,</b>  18 <b>Joy, Adele and others are involved in many</b>  19 <b>other -- it's a small world. They were involved</b>  20 <b>with MPPC, the FMI committee -- it may have</b>  21 <b>been -- should have been NCCR. I'm not sure.</b>  22 <b>It's NCCR, FMI. That might have been a typo on</b></p>

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<p style="text-align: right;">266</p> <p>1 <b>my part. They were upset to see a retailer</b>  2 <b>version of the producer standards, which must</b>  3 <b>have been this -- must have been Document 21. I</b>  4 <b>don't know.</b>  5 Q Let's not speculate.  6 <b>A I don't know. And --</b>  7 Q Okay.  8 <b>A -- which calls for space allowances</b>  9 <b>recommended by the scientific committee for</b>  10 <b>laying hens to be achieved by hen mortality. So</b>  11 <b>they were upset. And I transmitted that.</b>  12 Q Okay. And as part of what you  13 transmitted, did you transmit a request that the  14 scientific committee members' names should only  15 be used on the scientific document?  16 <b>A I did. I said that being the case, it</b>  17 <b>was requested that the scientific committee</b>  18 <b>members -- members to be used only on the</b>  19 <b>scientific document.</b>  20 Q And by that did you mean the scientific  21 advisory committee's recommendations as opposed  22 to the UEP guidelines?</p>	<p style="text-align: right;">268</p> <p>1 page as an email you received from Gene Gregory  2 on January 7, 2002, the next day?  3 <b>A Yes.</b>  4 Q And the title is using member names,  5 so -- and it concerns this topic; correct?  6 <b>A Yes.</b>  7 Q And Mr. Gregory copied Bob Krouse; do  8 you see that?  9 <b>A Yes.</b>  10 Q Do you know why Bob Krouse was copied?  11 <b>A I would assume because he was the chair</b>  12 <b>of the producer committee, and he -- he</b>  13 <b>referenced Bob in the first sentence.</b>  14 Q Okay.  15 <b>A But I can't speak for Gene.</b>  16 Q All right. And have you briefly  17 reviewed this email?  18 <b>A I scanned it.</b>  19 Q All right. I just want to focus  20 towards the bottom. Do you see where Mr. Gregory  21 says, "We cannot take the scientific committee  22 members out of the producer document because this</p>
<p style="text-align: right;">267</p> <p>1 <b>A That's exactly right.</b>  2 Q And you said --  3 <b>A And the -- go ahead.</b>  4 Q You said, "Gene, I think this is only  5 fair." Do you see that?  6 <b>A Yes. And, again, putting our name on</b>  7 <b>that document puts us in the perspective of</b>  8 <b>endorsing timelines and endorsing particular</b>  9 <b>actions that were not -- that are not in the</b>  10 <b>purview of the committee. And it really broke</b>  11 <b>that longstanding view that we had from the</b>  12 <b>beginning.</b>  13 Q And is that why you said having the  14 committee's names mentioned on any document other  15 than the scientific report implies that the  16 committee supports or endorses -- endorses those  17 guidelines when in fact they don't?  18 <b>A That's correct.</b>  19 Q All right. Now, if we turn to the next  20 page, can you identify this as Gene Gregory  21 responding to you, copying -- strike that.  22 Can you identify the email on the next</p>	<p style="text-align: right;">269</p> <p>1 has been printed and distributed since  2 October 2000"? Do you see that?  3 <b>A That's correct.</b>  4 Q And then he says, "If the committee  5 does not want us to use their names, then is it  6 fair to request that they not publish a report  7 for peer review since this project was initiated  8 by UEP?" Do you see that?  9 <b>A I do.</b>  10 Q And what do you understand Mr. Gregory  11 to mean by that?  12 <b>A I don't recall the -- knowing Gene,</b>  13 <b>Gene was upset. And he was saying, well, if</b>  14 <b>you're going to do this, I'm going to do that.</b>  15 <b>And --</b>  16 Q And the "that" --  17 <b>A -- that doesn't -- no. That was a</b>  18 <b>point in time that Gene was upset with me,</b>  19 <b>clearly. Yeah.</b>  20 Q And just for the sake of the record,  21 the "that" is suggesting that the members of the  22 committee couldn't publish anything about their</p>

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<p style="text-align: right;">270</p> <p>1 work on the committee in a peer-reviewed setting?</p> <p>2 <b>A He could request all day long, but he</b></p> <p>3 <b>has absolutely zero control over university</b></p> <p>4 <b>academicians on publishing papers.</b></p> <p>5 Q But is that what you understand him to</p> <p>6 be --</p> <p>7 <b>A That's what he requested.</b></p> <p>8 Q -- requesting?</p> <p>9 <b>A The document speaks for itself.</b></p> <p>10 Q And then he says, "We need to support</p> <p>11 one another." Do you see that?</p> <p>12 <b>A He did say that.</b></p> <p>13 Q And what did you understand that to</p> <p>14 mean?</p> <p>15 <b>A It's just out of the context he's mad</b></p> <p>16 <b>and -- and he's trying to get his way. It's just</b></p> <p>17 <b>back and forth between two human beings.</b></p> <p>18 Q Yeah. All right. And then if you look</p> <p>19 to the cover letter, can you identify this as a</p> <p>20 letter that was sent to you by Al Pope dated</p> <p>21 January 8, 2002, that is the next day?</p> <p>22 <b>A Mm-hmm. Yes.</b></p>	<p style="text-align: right;">272</p> <p>1 Dr. Armstrong. Sorry.</p> <p>2 MS. SUMNER: Did you intentionally skip</p> <p>3 23?</p> <p>4 MR. OLSON: Yes.</p> <p>5 <b>A Okay.</b></p> <p>6 Q All right. And can you identify this</p> <p>7 as an email you sent to Gene Gregory copying the</p> <p>8 scientific advisory committee on March 17th,</p> <p>9 2002?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And you copied Bob Krouse again;</p> <p>12 correct?</p> <p>13 <b>A I did.</b></p> <p>14 Q Because he was a member of the</p> <p>15 committee?</p> <p>16 <b>A He was ex officio member by reason of</b></p> <p>17 <b>his position as the committee chair. Sure.</b></p> <p>18 Q Do you recall this email that you sent?</p> <p>19 <b>A I -- I do now.</b></p> <p>20 Q This has refreshed your recollection?</p> <p>21 <b>A It has.</b></p> <p>22 Q Okay.</p>
<p style="text-align: right;">271</p> <p>1 Q And it's Mr. Pope now weighing in with</p> <p>2 his thoughts on this -- this email that you had</p> <p>3 written; correct?</p> <p>4 <b>A Yes. That's correct.</b></p> <p>5 Q I think that we can just put that aside</p> <p>6 and move on.</p> <p>7 And we are going to skip Exhibit 23 and</p> <p>8 go to Exhibit 24. So let me hand you what's been</p> <p>9 marked Armstrong 24.</p> <p>10 (Deposition Exhibit 24 was marked for</p> <p>11 identification.)</p> <p>12 Q And this is -- was previously Gene</p> <p>13 Gregory 33. It's Bates stamped UE0174535</p> <p>14 through --</p> <p>15 MS. SUMNER: Can you repeat that number</p> <p>16 one more time, please?</p> <p>17 MR. OLSON: Yes. UE0174535 through 36.</p> <p>18 Q And Mr. -- Dr. Gregory, please briefly</p> <p>19 review it, and let us know when you're done.</p> <p>20 MR. KEALEY: I think you meant</p> <p>21 Dr. Armstrong.</p> <p>22 MR. OLSON: Right. Sorry.</p>	<p style="text-align: right;">273</p> <p>1 <b>A Yes.</b></p> <p>2 Q And it's generally about this same --</p> <p>3 <b>A Yes.</b></p> <p>4 Q -- topic? Umm --</p> <p>5 <b>A I was -- I was wondering what happened</b></p> <p>6 <b>next.</b></p> <p>7 Q So essentially you say on behalf of the</p> <p>8 committee you want to continue the dialogue about</p> <p>9 this issue; correct?</p> <p>10 <b>A Mm-hmm.</b></p> <p>11 Q And again you raise the concern about</p> <p>12 the committee members' names being on the</p> <p>13 producer guidelines.</p> <p>14 <b>A Mm-hmm.</b></p> <p>15 Q Right?</p> <p>16 <b>A Yeah. Scientists, academicians, are</b></p> <p>17 <b>very careful about what they put their name on.</b></p> <p>18 <b>And they didn't want to be tied into the</b></p> <p>19 <b>implementation. While we're reviewing it, this</b></p> <p>20 <b>is also evidence that if we see something that's</b></p> <p>21 <b>not what we think it should be, we point it out.</b></p> <p>22 Q Right. Because one of the points you</p>



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<p style="text-align: right;">274</p> <p>1 make is that there's -- there's a difference 2 between the scientific advisory committee 3 recommendations and the producer guidelines; 4 right? 5 <b>A That's accurate, yes.</b> 6 Q And you refer to this difference with 7 regard to space allowances; correct? 8 <b>A Umm --</b> 9 Q Well, just to be clear, what you write 10 is -- 11 <b>A This language speaks for itself. Yes.</b> 12 Q So just to be clear what language we're 13 talking about, it says "The scientific document 14 recommends a per-hen range of 67 to 86 square 15 inches, but makes it plain that the lowest limit 16 is to apply only to small leghorns in shallow 17 cages, and that generally 72 square inches per 18 hen should be provided." Right? 19 <b>A That's correct. And since you</b> 20 <b>mentioned that, from a -- from a broad</b> 21 <b>perspective, not, you know, necessarily with this</b> 22 <b>specific document, I can tell you that over time</b></p>	<p style="text-align: right;">276</p> <p>1 <b>A Yes.</b> 2 Q And then you also identified 3 differences with regard to lighting and ammonia 4 as of this time; correct? 5 <b>A That's correct. There -- you know, in</b> 6 <b>one sense -- and that's probably what I said to</b> 7 <b>Gene on the phone, is there -- you know, is there</b> 8 <b>a tremendous difference? Where are we going?</b> 9 <b>When do we -- when does the committee get upset</b> 10 <b>about a detail? When do we let a detail go? And</b> 11 <b>I tried to keep the committee focused on what</b> 12 <b>really is making a difference in animal welfare</b> 13 <b>versus what's an implementation step that in two</b> 14 <b>or three years is going to be not an issue</b> 15 <b>anymore.</b> 16 Q Because -- 17 <b>A And that was a constant struggle.</b> 18 Q Because the scientific advisory 19 committee was not concerned with the 20 implementation steps. Correct? 21 <b>A Not as concerned.</b> 22 Q Now, 67 square inches, would it be fair</p>
<p style="text-align: right;">275</p> <p>1 <b>the committee basically said, okay, we'll accept</b> 2 <b>67.</b> 3 Q But that was -- 4 <b>A That was not the case at this time.</b> 5 Q And I take it that was sort of a 6 reluctant -- or a -- something the committee was 7 reluctant to accept? 8 <b>A I wouldn't say reluctant because I</b> 9 <b>don't recall at that exact time. There was --</b> 10 <b>Steig, there was give and take back and forth</b> 11 <b>with this committee. There were -- there were</b> 12 <b>times when one committee member might have been</b> 13 <b>upset at another, and it was a very long and</b> 14 <b>dynamic process. And any time people are</b> 15 <b>involved you get this type of thing.</b> 16 Q All right. There's also a reference -- 17 and I don't think we need to get into it -- to 18 the using a per-house average as opposed to 19 per-hen; right? 20 <b>A Mm-hmm.</b> 21 Q That was another difference you 22 identified?</p>	<p style="text-align: right;">277</p> <p>1 to say that that is smaller than the piece of 2 paper that this email is written on? 3 <b>A I don't do the math in my head very</b> 4 <b>quickly, but 67 square inches is 67 square</b> 5 <b>inches. So 8 by 11 would be 88. So yes, it's</b> 6 <b>smaller.</b> 7 Q Smaller than this piece of paper? 8 <b>A That's correct.</b> 9 Q All right. So would it be fair to say 10 that as of this time in 2002, under the producer 11 guidelines, hens could be certified under the UEP 12 program while they were kept in a cage smaller 13 than this piece of paper, that didn't give them 14 sufficient room to flap their wings? True so 15 far? 16 MS. SUMNER: Objection. 17 <b>A Cage systems in general do not permit</b> 18 <b>birds to freely flap their wings.</b> 19 Q And -- and even birds within the 20 certified program weren't necessarily given 21 enough space to perform basic hen behavior 22 comfortably; correct?</p>

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<p style="text-align: right;">278</p> <p>1 MS. SUMNER: Object to form.</p> <p>2 <b>A You're pulling one document out of</b></p> <p>3 <b>context. The overall view of the committee is</b></p> <p>4 <b>that where we settled was 67. We went through a</b></p> <p>5 <b>transition of 72. And what I got the committee</b></p> <p>6 <b>to -- you know, the committee, myself through</b></p> <p>7 <b>discussion, and I never got them do anything they</b></p> <p>8 <b>wouldn't agree to, that we settled on 67. And we</b></p> <p>9 <b>knew that through the transition birds would be</b></p> <p>10 <b>housed at less than 67. And 67 is a remarkable</b></p> <p>11 <b>victory compared to 48 as far as hen welfare.</b></p> <p>12 <b>So we were looking at major changes,</b></p> <p>13 <b>not diving down to a specific, you know, would</b></p> <p>14 <b>this small bird be able to flap? Would this</b></p> <p>15 <b>small bird have enough room to sit or a larger</b></p> <p>16 <b>bird have enough room to sit?</b></p> <p>17 <b>Some of my committee members at first</b></p> <p>18 <b>really wanted to look at that range and really</b></p> <p>19 <b>look at different birds, and that wasn't</b></p> <p>20 <b>practical to ever implement. And that's why we</b></p> <p>21 <b>ended up where we ended up, which is after this.</b></p> <p>22 <b>Q Right. But the science -- the</b></p>	<p style="text-align: right;">280</p> <p>1 <b>producers phased in the space allowances and the</b></p> <p>2 <b>committee was fully aware that there was a</b></p> <p>3 <b>phase-in. What the committee takes pride in and</b></p> <p>4 <b>what the committee now sees is that we are to a</b></p> <p>5 <b>67 and it's been implemented.</b></p> <p>6 <b>Q All right.</b></p> <p>7 <b>A So during the transition, were there</b></p> <p>8 <b>back and forth and were there subtle differences?</b></p> <p>9 <b>Yes. And I cannot recall or track those for you,</b></p> <p>10 <b>but I would be glad to comment on specific points</b></p> <p>11 <b>or documents.</b></p> <p>12 <b>Q Okay. Well, let's then -- put the</b></p> <p>13 <b>phase-in aside. Let's assume that -- jump right</b></p> <p>14 <b>to 67. That's still seven inches less than what</b></p> <p>15 <b>the committee said birds needed on average to</b></p> <p>16 <b>perform basic behaviors; correct?</b></p> <p>17 <b>MS. SUMNER: Object to the form of the</b></p> <p>18 <b>question.</b></p> <p>19 <b>A The committee said in its final</b></p> <p>20 <b>recommendation that 67 to 86 is the -- is the</b></p> <p>21 <b>recommendation, and the committee recognized that</b></p> <p>22 <b>the industry went to 67 as the final. And from a</b></p>
<p style="text-align: right;">279</p> <p>1 scientific advisory committee's report had</p> <p>2 concluded that white leghorn hens required an</p> <p>3 average of 74 square inches to perform even the</p> <p>4 most basic behaviors like standing comfortably</p> <p>5 and resting; correct?</p> <p>6 <b>A You're pulling -- you're pulling -- one</b></p> <p>7 <b>paper stated that, and the committee stated that</b></p> <p>8 <b>for white leghorn hens. But our recommendation</b></p> <p>9 <b>ended up being 67 to 86. There was give and</b></p> <p>10 <b>take, Steig. Yes. That's correct.</b></p> <p>11 <b>Q All right. So, if you could just stick</b></p> <p>12 <b>with me. Now I want to talk about the</b></p> <p>13 <b>requirements under the producer program.</b></p> <p>14 <b>A Mm-hmm.</b></p> <p>15 <b>Q All right. So under the producer</b></p> <p>16 <b>program, a hen would get -- could pass the</b></p> <p>17 <b>program while getting less than the space needed</b></p> <p>18 <b>to perform even the most basic behaviors like</b></p> <p>19 <b>standing comfortably and resting; correct?</b></p> <p>20 <b>MS. SUMNER: Object to form of the</b></p> <p>21 <b>question.</b></p> <p>22 <b>A The producers phased in -- the</b></p>	<p style="text-align: right;">281</p> <p>1 <b>practical perspective, we lived with it.</b></p> <p>2 <b>Q All right. And now --</b></p> <p>3 <b>A But some members of the committee, if</b></p> <p>4 <b>they were writing the guidelines by themselves,</b></p> <p>5 <b>would have put everybody in enriched cages</b></p> <p>6 <b>tomorrow, including myself. But that's not at</b></p> <p>7 <b>all practical, and would not -- have very little</b></p> <p>8 <b>impact -- it would have very little impact on</b></p> <p>9 <b>animal welfare because it would have -- wouldn't</b></p> <p>10 <b>have been implementable.</b></p> <p>11 <b>Q And I just want to go back to mid 2002</b></p> <p>12 <b>during the time of this document just to have the</b></p> <p>13 <b>record --</b></p> <p>14 <b>A Yes.</b></p> <p>15 <b>Q -- give a landscape of what the</b></p> <p>16 <b>producer guidelines were requiring. All right.</b></p> <p>17 <b>So we've talked about how much cage -- how much</b></p> <p>18 <b>space they get in a cage.</b></p> <p>19 <b>Now, would it -- to your knowledge, at</b></p> <p>20 <b>this time, mid 2002, could a producer be</b></p> <p>21 <b>certified even if -- because they were still</b></p> <p>22 <b>using older cages -- manure from the higher hens</b></p>

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<p style="text-align: right;">282</p> <p>1 was dropping directly on the lower hens?</p> <p>2 <b>A I believe there was a document earlier</b></p> <p>3 <b>today where there was grandfathering of -- that</b></p> <p>4 <b>was the phrase the industry used to facilities,</b></p> <p>5 <b>and the committee was aware of that. But the</b></p> <p>6 <b>committee also knew there -- that we were headed</b></p> <p>7 <b>toward a goal. So, yes, there were transitions.</b></p> <p>8 Q All right. And as of mid 2002, to your</p> <p>9 knowledge, under the producer guidelines, could a</p> <p>10 producer be certified even though it forcibly</p> <p>11 starved its hens for two weeks or longer?</p> <p>12 MS. SUMNER: Object to the form.</p> <p>13 <b>A What I can tell you is that there were</b></p> <p>14 <b>transition points, various phases of</b></p> <p>15 <b>implementation. And the committee was aware that</b></p> <p>16 <b>molted induced by feed withdrawal would occur,</b></p> <p>17 <b>and we told them certain conditions that should</b></p> <p>18 <b>go along with that to mitigate the negative</b></p> <p>19 <b>aspects. So yes, the committee recognized during</b></p> <p>20 <b>implementation that it wasn't going to be</b></p> <p>21 <b>perfect, but we were moving away from an inhumane</b></p> <p>22 <b>system to a humane system.</b></p>	<p style="text-align: right;">284</p> <p>1 <b>them at 48.</b></p> <p>2 Q All right. I recognize that you're</p> <p>3 saying you're not conversant in all the details</p> <p>4 of the producer guidelines, but you are aware</p> <p>5 based on this document that as of March 2002</p> <p>6 producers could be certified under the</p> <p>7 guidelines, even though --</p> <p>8 <b>A Was --</b></p> <p>9 Q -- they weren't meeting the ammonia and</p> <p>10 the lighting recommendations of the scientific</p> <p>11 committee?</p> <p>12 MS. SUMNER: Object to the form --</p> <p>13 Q Correct?</p> <p>14 MS. SUMNER: -- of the question.</p> <p>15 <b>A I am -- I am recognizing at this point</b></p> <p>16 <b>I was much more -- at the date of this note,</b></p> <p>17 <b>March 17th, 2002, I was much more conversant with</b></p> <p>18 <b>the details. And I am recognizing that there was</b></p> <p>19 <b>a transition in the implementation of the</b></p> <p>20 <b>guidelines, as I've stated several times.</b></p> <p>21 Q All right. Let me just try to pull all</p> <p>22 this together.</p>
<p style="text-align: right;">283</p> <p>1 <b>Were there points where it wasn't</b></p> <p>2 <b>exactly like we wanted? And that was my role to</b></p> <p>3 <b>try to keep the committee moving and thinking</b></p> <p>4 <b>about the big picture and not get tied up and</b></p> <p>5 <b>worried about specific details.</b></p> <p>6 Q All right. And again, speaking about</p> <p>7 this time in mid 2002, a producer could be</p> <p>8 certified under the producer program even if it</p> <p>9 was beak trimming all of its --</p> <p>10 <b>A I --</b></p> <p>11 Q -- baby hens?</p> <p>12 <b>A I was not -- I was not then, and I'm</b></p> <p>13 <b>not conversant now, on the details of the</b></p> <p>14 <b>certification program other than we worked to</b></p> <p>15 <b>make sure that the main points of the</b></p> <p>16 <b>science-based guidelines were included, and I</b></p> <p>17 <b>think there's evidence here that we complained</b></p> <p>18 <b>and said, hey, this isn't exactly right.</b></p> <p>19 <b>Gene had producers that were pushing,</b></p> <p>20 <b>pushing, pushing, because they did not want to do</b></p> <p>21 <b>this. They didn't want to give them 67. They</b></p> <p>22 <b>didn't want to give them 72. They wanted to keep</b></p>	<p style="text-align: right;">285</p> <p>1 So, Dr. Armstrong, from an animal</p> <p>2 welfare perspective, was a program that allowed</p> <p>3 producers to house their hens in cages too small</p> <p>4 for the hens to comfortably perform basic</p> <p>5 behaviors, that allowed for those hens to be in</p> <p>6 cages where manure was dropping directly on their</p> <p>7 heads from hens above them, that allowed for the</p> <p>8 producer to forcibly starve those hens for two</p> <p>9 weeks or longer, where all of the baby hens were</p> <p>10 beak trimmed, and where the hens were not</p> <p>11 receiving the minimum lighting or ammonia</p> <p>12 standards recommended by the scientific advisory</p> <p>13 committee, was that program truly providing a</p> <p>14 humane way of treating those hens?</p> <p>15 MS. SUMNER: Object to the form of the</p> <p>16 question.</p> <p>17 <b>A At all points from the formation of the</b></p> <p>18 <b>scientific committee through the life of the</b></p> <p>19 <b>committee, albeit back and forth like this</b></p> <p>20 <b>(indicating), the committee and the individual</b></p> <p>21 <b>members would tell you overarchingly the</b></p> <p>22 <b>producers implemented this to the best of their</b></p>

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<p style="text-align: right;">286</p> <p>1 ability. So was the committee aware of a</p> <p>2 transition in implementation? Yes.</p> <p>3 Did we believe -- did we believe that</p> <p>4 the program was humane? Yes.</p> <p>5 Q So hens --</p> <p>6 A So the program was -- the program --</p> <p>7 the industry was moving from no -- no guidelines</p> <p>8 whatsoever to guidelines. And the committee as a</p> <p>9 whole realized that there are practical measures</p> <p>10 and aspects that go through this.</p> <p>11 So to dive down to any one point in</p> <p>12 time during the transition and say that a program</p> <p>13 is not appropriate when it is heading in the</p> <p>14 slope of the line in change that's quite</p> <p>15 monumental, I don't agree with that foundation.</p> <p>16 Q But were those hens at that time, that</p> <p>17 were in a cage smaller than a sheet of paper,</p> <p>18 with manure dripping on them and forcibly starved</p> <p>19 for two weeks or more being treated in a humane</p> <p>20 way?</p> <p>21 MS. SUMNER: Object --</p> <p>22 MR. KEALEY: Object --</p>	<p style="text-align: right;">288</p> <p>1 of time and then I'll read -- if you go to</p> <p>2 certain sections, I'll read in more detail.</p> <p>3 Q Fair enough. And if at any time you</p> <p>4 need to read anything --</p> <p>5 A Sure.</p> <p>6 Q -- to answer a question, you always</p> <p>7 can, of course. But --</p> <p>8 A Thank you.</p> <p>9 Q -- can you just identify the document</p> <p>10 for us?</p> <p>11 A These are the March 1, 2003 minutes of</p> <p>12 the UEP welfare scientific advisory committee.</p> <p>13 Q And did you take these notes?</p> <p>14 A Apparently Scotti and I took the</p> <p>15 notes --</p> <p>16 Q Was it the --</p> <p>17 A -- together. I don't know who actually</p> <p>18 typed them in. But we would have reviewed them</p> <p>19 together before we submitted them to the</p> <p>20 committee and UEP.</p> <p>21 Q Was there any typical practice of</p> <p>22 taking notes of the scientific advisory committee</p>
<p style="text-align: right;">287</p> <p>1 A A higher percentage of hens --</p> <p>2 THE REPORTER: Wait. Hold on.</p> <p>3 A -- were being --</p> <p>4 THE REPORTER: Okay. Thank you.</p> <p>5 A A higher percentage of hens were being</p> <p>6 treated in a humane manner than when we started</p> <p>7 the program, and that percentage increased every</p> <p>8 month of the program as UEP, the animal producer</p> <p>9 committee, as deemed by me and interaction with</p> <p>10 the committee, continued to make progress.</p> <p>11 This note and the notes that you just</p> <p>12 put forward of March -- of 17, of 24, indicates</p> <p>13 and captures a moment in time where we had</p> <p>14 disagreements.</p> <p>15 Q All right. I've handed you what we've</p> <p>16 marked Armstrong 25. It's Bates stamped</p> <p>17 UE0211387 through 90. And I'd like you to just</p> <p>18 see if you can, after looking at the document,</p> <p>19 identify it for us.</p> <p>20 (Deposition Exhibit 25 was marked for</p> <p>21 identification.)</p> <p>22 A All right. I scanned it in the spirit</p>	<p style="text-align: right;">289</p> <p>1 meetings?</p> <p>2 A As I recall, sometimes yes, sometimes</p> <p>3 no.</p> <p>4 Q And when it was yes, what was the</p> <p>5 practice?</p> <p>6 A I guess this. I assume this.</p> <p>7 Q All right. And do you know who took</p> <p>8 them?</p> <p>9 A It -- I would take notes, sometimes</p> <p>10 Scotti would take notes, and I think Gene always</p> <p>11 took notes.</p> <p>12 Q And how did you take notes?</p> <p>13 A I -- never the same. Sometimes I'll</p> <p>14 write on the computer, some -- type on a</p> <p>15 computer, sometimes I'll write notes. But if I</p> <p>16 can avoid taking notes, I avoid it, just as a</p> <p>17 general practice.</p> <p>18 Q And with regard to the notes that you</p> <p>19 took, how did you keep them?</p> <p>20 A Anything we did, we distributed</p> <p>21 electronically via email typically.</p> <p>22 Q And how did you keep the notes that you</p>

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<p style="text-align: right;">290</p> <p>1 took yourself?</p> <p>2 <b>A On my computer.</b></p> <p>3 Q Are they still in your computer today?</p> <p>4 <b>A I have no idea. I've moved a couple</b></p> <p>5 <b>times since then.</b></p> <p>6 Q Has anybody asked you to collect those?</p> <p>7 <b>A They have not.</b></p> <p>8 Q Has anybody asked you to preserve</p> <p>9 those?</p> <p>10 <b>A They have not.</b></p> <p>11 Q All right. Let's look at the second</p> <p>12 page of this document. There's a heading that</p> <p>13 says Feeder Space.</p> <p>14 <b>A Okay.</b></p> <p>15 Q And it references Joy Mench pointing</p> <p>16 out some discrepancies between the guidelines and</p> <p>17 audit forms on feeder space; do you see that?</p> <p>18 <b>A I do.</b></p> <p>19 Q Do you recall those issues being</p> <p>20 discussed?</p> <p>21 <b>A Not in detail, but they were.</b></p> <p>22 Q Okay. Then if you look at the next</p>	<p style="text-align: right;">292</p> <p>1 Q All right. Do you recall this meeting?</p> <p>2 <b>A I do.</b></p> <p>3 Q There was a discussion of the -- of</p> <p>4 cage configuration and feed space issues;</p> <p>5 correct?</p> <p>6 <b>A Mm-hmm. Mm-hmm.</b></p> <p>7 Q And you made some comments in that</p> <p>8 regard; correct?</p> <p>9 <b>A I did.</b></p> <p>10 Q All right. And you reference -- you</p> <p>11 referenced a visit to an egg farm where the</p> <p>12 committee saw manure dropping on birds in lower</p> <p>13 cages. Do you see that?</p> <p>14 <b>A I do.</b></p> <p>15 Q And when did that visit occur? Do you</p> <p>16 recall?</p> <p>17 <b>A It must have been the visit, I think</b></p> <p>18 <b>it's referenced in the second committee meeting</b></p> <p>19 <b>maybe.</b></p> <p>20 Q Okay. So back in 1999?</p> <p>21 <b>A I think so.</b></p> <p>22 Q All right.</p>
<p style="text-align: right;">291</p> <p>1 page at the top, the third sentence, do you see</p> <p>2 where it says "it was the general consensus of</p> <p>3 the committee that feeder space was even more</p> <p>4 important than the space allowance"?</p> <p>5 <b>A That was the feeling at the time.</b></p> <p>6 Q Okay. You can put that aside.</p> <p>7 <b>A But feeder space evolved.</b></p> <p>8 Q Let me hand you what's been marked</p> <p>9 Armstrong 26.</p> <p>10 (Deposition Exhibit 26 was marked for</p> <p>11 identification.)</p> <p>12 Q This is Bates stamped UE0153284 through</p> <p>13 25. And can you identify this as minutes of the</p> <p>14 producer committee for animal welfare meeting in</p> <p>15 Chicago dated March 3rd, 2004?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And you attended; correct?</p> <p>18 <b>A Yes.</b></p> <p>19 Q All right. Why don't you just review</p> <p>20 the first page. I'll have a couple questions</p> <p>21 there.</p> <p>22 <b>A Yes. I'm ready.</b></p>	<p style="text-align: right;">293</p> <p>1 <b>A Or whenever -- yeah. I think that</b></p> <p>2 <b>would have been it. That would've -- that was</b></p> <p>3 <b>the main one where the committee was together.</b></p> <p>4 <b>Yes.</b></p> <p>5 Q All right. So would it be fair to say</p> <p>6 that nearly five years later, in 2004, the</p> <p>7 scientific advisory committee was still concerned</p> <p>8 that hens were being housed in systems where</p> <p>9 manure from higher cages was dropping on birds in</p> <p>10 lower cages?</p> <p>11 MS. SUMNER: Objection.</p> <p>12 <b>A I think that the document speaks for</b></p> <p>13 <b>itself as to what I transmitted to the -- to the</b></p> <p>14 <b>producer committee at that time.</b></p> <p>15 Q That was still a concern?</p> <p>16 <b>A I don't -- I don't recall the details</b></p> <p>17 <b>of that. I recall the -- for some reason I</b></p> <p>18 <b>recall the discussion of feeder space, because</b></p> <p>19 <b>that was quite lengthy and quite concerning. I</b></p> <p>20 <b>don't recall whether -- where we were as far as</b></p> <p>21 <b>the manure drop-down. Because the committee</b></p> <p>22 <b>never budged on that, I don't -- I don't recall</b></p>

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<p style="text-align: right;">294</p> <p>1 the exact details of what we were dealing with</p> <p>2 here with regard to manure drop-down, other than</p> <p>3 what it says.</p> <p>4 Q All right. And do you see where you</p> <p>5 reference some research that had -- had occurred</p> <p>6 on feeder space?</p> <p>7 A I do. I see that.</p> <p>8 Q So as of March of 2004, your view was</p> <p>9 that the research that had been done on feeder</p> <p>10 space confirmed that as additional feeder space</p> <p>11 was provided, hens performed at higher levels;</p> <p>12 correct?</p> <p>13 A That is correct. We -- I presented</p> <p>14 that information. The committee was not really</p> <p>15 clear, but it -- but at that point we -- the best</p> <p>16 we knew was that it needed to be four inches. I</p> <p>17 took that to the committee, to this group, and</p> <p>18 they pushed back and said that's not what we see</p> <p>19 in the field.</p> <p>20 I took that back to the -- to the</p> <p>21 scientific committee, and the end result is we</p> <p>22 designed a set of experiments that were conducted</p>	<p style="text-align: right;">296</p> <p>1 with regard to how we felt about the range of</p> <p>2 space, it would have been about a 9. This would</p> <p>3 have been about a 5.</p> <p>4 Q Okay.</p> <p>5 A And as we subsequently changed the</p> <p>6 documents, we said such that birds could consume</p> <p>7 feed. And we did that based on the results of</p> <p>8 the study conducted at Purdue.</p> <p>9 Q Okay. So the -- anything other than</p> <p>10 this Purdue study led to the change in the</p> <p>11 recommendation?</p> <p>12 A The Purdue study was very pivotal in</p> <p>13 that wording change.</p> <p>14 Q Okay. Were there other studies other</p> <p>15 than the Purdue study that were relied upon?</p> <p>16 A I'm sure there -- I mean there were</p> <p>17 numerous studies that the committee looked at,</p> <p>18 not just one. But that one confirmed with the --</p> <p>19 with the strain of birds that's the majority</p> <p>20 today, we don't know, and they would all say we</p> <p>21 need additional research.</p> <p>22 That's the other -- that's another</p>
<p style="text-align: right;">295</p> <p>1 at Purdue University, and it proved the producer</p> <p>2 view correct, and it proved the old results</p> <p>3 Dr. Joy Mench -- not necessarily incorrect for</p> <p>4 that time, but for the majority of birds now, in</p> <p>5 that one particular study, it wasn't clear. The</p> <p>6 study conducted at Purdue did not confirm that</p> <p>7 cage -- that feeder space was related to hen</p> <p>8 performance.</p> <p>9 Q All right.</p> <p>10 A So this is an example of the back and</p> <p>11 forth.</p> <p>12 Q Okay. So let's break that down a</p> <p>13 little bit. As of this time, the best scientific</p> <p>14 teaching available taught that additional feeder</p> <p>15 space was critically important to hen welfare;</p> <p>16 correct?</p> <p>17 MS. SUMNER: Objection.</p> <p>18 A That's what we -- that's what we</p> <p>19 thought.</p> <p>20 Q At the time?</p> <p>21 A But it was -- if you -- if you look at</p> <p>22 our level of confidence on a scale of zero to 10</p>	<p style="text-align: right;">297</p> <p>1 common thread here. There's some things you know</p> <p>2 and some things the best knowledge of the day is</p> <p>3 what we have.</p> <p>4 Q And do you see here that there was a</p> <p>5 motion made with regard to new cage equipment?</p> <p>6 A Mm-hmm.</p> <p>7 Q And it said new cage equipment ordered</p> <p>8 after May 14, 2004, and installed after</p> <p>9 December 31, 2004, must provide ten centimeters</p> <p>10 of feeder space per hen and zero exposed area for</p> <p>11 manure drop-through, and it continues; do you see</p> <p>12 that?</p> <p>13 A I do.</p> <p>14 Q Do you see that motion was withdrawn?</p> <p>15 A I do.</p> <p>16 Q So is it consistent with your knowledge</p> <p>17 at this time that there was no hard-and-fast</p> <p>18 requirement under the UEP producer program that</p> <p>19 cages could not allow manure to drop directly on</p> <p>20 hens in lower cages?</p> <p>21 A No. What was clear is what's stated in</p> <p>22 the document that their motion to effect</p>



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<p style="text-align: right;">298</p> <p>1 equipment orders was discussed and withdrawn.  2 The conversation about manure drop-through and  3 the combination -- conversation about feeder  4 space was quite involved and complicated, as I  5 alluded to earlier.  6 Q Do you know if there was any clear  7 prohibition on cages permitting manure  8 drop-through as of 2004?  9 A Best of my recollection is that the  10 committee stated repeatedly that we wanted to get  11 to a space, we wanted to get our different  12 guidelines, and that the industry was getting  13 there as quickly as they could. As I said  14 earlier, Steig, the committee understood that  15 during the transition we were increasing welfare  16 for birds, but it wasn't perfect as we were  17 transitioning.  18 Q All right. I've handed you what we've  19 marked Armstrong 27, Bates stamped UC_E00052294  20 through 97. If you could just briefly review  21 this.  22 (Deposition Exhibit 27 was marked for</p>	<p style="text-align: right;">300</p> <p>1 Q And what's -- what is the point?  2 A I think the document stands for itself.  3 That's what I -- what I wrote.  4 Q That -- are you saying it's just  5 unacceptable to have cages that allow manure to  6 drop on lower hens and it shouldn't be a matter  7 of points coming off an audit?  8 A Yeah, we -- yeah. That's what we were  9 saying.  10 Q All right.  11 All right. You can put that aside.  12 (Deposition Exhibit 28 was marked for  13 identification.)  14 Q Let me hand you what's been marked  15 Armstrong 28. This is previously Gregory 68.  16 Can you identify this, Dr. Armstrong, as a United  17 Voices publication from May 20th, 2004?  18 A Yes.  19 Q And if you look at the second page,  20 there is a reference to an -- there's an  21 editorial by Gene Gregory called Are You  22 Committed? I want you to briefly take a look at</p>
<p style="text-align: right;">299</p> <p>1 identification.)  2 A Okay.  3 Q All right. Can you identify the email  4 at the back as one that you wrote on April 23rd,  5 2004?  6 A Yes.  7 Q And towards the end you make a point  8 about protecting hens in lower cages from manure  9 dropping from upper cages.  10 A I did. Yes.  11 Q And you make a point about -- you say,  12 "We believe it would be a serious mistake for  13 producers to simply disregard this recommendation  14 by saying they would give up the points in the  15 audit." Do you see that?  16 A Yes, I did.  17 Q Do you know what you're referring to  18 there?  19 A Yeah, yeah. That's -- that helps me  20 because I think that was probably discussed at  21 this -- at the other meeting, but I'm not sure.  22 Yes.</p>	<p style="text-align: right;">301</p> <p>1 that.  2 A Okay. I scanned it. If you have  3 specific areas, I'll dive in again.  4 Q Just a couple. Do you recall reviewing  5 this editorial --  6 A I do not recall --  7 MS. SUMNER: Objection.  8 A -- this --  9 Q -- as you sit here today?  10 A Pardon?  11 Q Let me just ask the full question.  12 Sorry.  13 Do you recall ever reviewing this  14 editorial prior to just looking at it now?  15 MS. SUMNER: Objection.  16 A Not to my recollection.  17 Q Then we'll just look at a couple  18 points. Do you see where Mr. Gregory at the  19 bottom of the first page says, "While never  20 intended as supply adjustment program, the animal  21 care certified program is the only roadmap the  22 industry has ever had for future planning"? Do</p>

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<p style="text-align: right;">302</p> <p>1 you see that?</p> <p>2 <b>A I do.</b></p> <p>3 Q Do you recall ever discussing those</p> <p>4 concepts with Gene Gregory?</p> <p>5 <b>A No.</b></p> <p>6 MS. SUMNER: Objection.</p> <p>7 Q Where it says, "If you stay true to the</p> <p>8 program and manage it to meet the market demand,</p> <p>9 it can provide the industry with prolonged</p> <p>10 profits"; do you see that?</p> <p>11 <b>A I do.</b></p> <p>12 Q Do you recall discussing those concepts</p> <p>13 with Gene Gregory?</p> <p>14 MS. SUMNER: Objection.</p> <p>15 <b>A Not to my recollection.</b></p> <p>16 Q And then he says, "For many people</p> <p>17 backfilling to replace mortality was a new</p> <p>18 production practice and may be necessary to</p> <p>19 maximize profits, but it's now time to rethink</p> <p>20 this position. Backfilling into unprofitable</p> <p>21 periods certainly doesn't make good business</p> <p>22 sense." Do you see that?</p>	<p style="text-align: right;">304</p> <p>1 <b>through email or paper. I don't remember when</b></p> <p>2 <b>that changed.</b></p> <p>3 Q All right. Mr. -- Mr. Pope says,</p> <p>4 "Whose program is it anyway, this UEP animal care</p> <p>5 certified program?" Do you see that?</p> <p>6 <b>A I do.</b></p> <p>7 Q It eventually says, "program belongs to</p> <p>8 those of you who are participating in the</p> <p>9 program. You decide how the program operates."</p> <p>10 Do you see that?</p> <p>11 <b>A Mm-hmm.</b></p> <p>12 Q Did you ever discuss those concepts</p> <p>13 with Mr. Pope?</p> <p>14 <b>A Not that I recall. I did not have a</b></p> <p>15 <b>tremendous number of conversations with AI, nor</b></p> <p>16 <b>with Gene, nor with the animal welfare producer</b></p> <p>17 <b>committee chair.</b></p> <p>18 Q I think the court reporter wrote down</p> <p>19 "nor with Gene, nor with the animal welfare</p> <p>20 producer committee," but you said more --</p> <p>21 <b>A More.</b></p> <p>22 Q More?</p>
<p style="text-align: right;">303</p> <p>1 <b>A I do.</b></p> <p>2 Q Do you recall discussing those concepts</p> <p>3 with Gene Gregory?</p> <p>4 MS. SUMNER: Objection.</p> <p>5 <b>A I do not recall. But I had hundreds of</b></p> <p>6 <b>emails and hundreds of discussions. Not to my</b></p> <p>7 <b>recollection.</b></p> <p>8 <b>(Deposition Exhibit 29 was marked for</b></p> <p>9 <b>identification.)</b></p> <p>10 Q Let me hand you what we've marked</p> <p>11 Armstrong 29, which is the United Voices from</p> <p>12 August 12th, 2004. And it was previously Pope</p> <p>13 Exhibit 35.</p> <p>14 In here, Dr. Armstrong, if you look at</p> <p>15 the second page, again, there's an editorial,</p> <p>16 this one by AI Pope. It's called Backfilling:</p> <p>17 The Loophole of a Hangman's Noose.</p> <p>18 <b>A Yes. I've read it.</b></p> <p>19 Q All right. Do you recall ever seeing</p> <p>20 this editorial before?</p> <p>21 <b>A I'm sure I scanned it, just like that</b></p> <p>22 <b>one, but I don't recall. I mean they all came</b></p>	<p style="text-align: right;">305</p> <p>1 <b>A Yeah.</b></p> <p>2 Q All right.</p> <p>3 <b>A I had more -- most of my contact would</b></p> <p>4 <b>be with those two individuals.</b></p> <p>5 Q All right. So --</p> <p>6 <b>A But I had contact with AI, so to best</b></p> <p>7 <b>of my recollection, I don't recall.</b></p> <p>8 Q All right. So Mr. Pope said here, "In</p> <p>9 this regard, the original intent of permitting</p> <p>10 animal care certified companies to backfill was</p> <p>11 to accommodate those few extra unexpected pullets</p> <p>12 from grow-out facilities." Do you see that?</p> <p>13 <b>A Mm-hmm.</b></p> <p>14 Q "This option will avoid the destruction</p> <p>15 and waste of what otherwise was a productive</p> <p>16 bird." Do you see that?</p> <p>17 <b>A Mm-hmm.</b></p> <p>18 Q Do you know what Mr. Pope was referring</p> <p>19 to there?</p> <p>20 <b>A I think it's exactly what it says.</b></p> <p>21 Q Okay. And is that consistent with your</p> <p>22 knowledge?</p>

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<p style="text-align: right;">306</p> <p>1       <b>A Yes. That's one argument for</b>  2       <b>backfilling.</b>  3       Q To avoid --  4       <b>A There are arguments against.</b>  5       Q Right. So one of the arguments for  6       backfilling is to avoid the destruction and waste  7       of a bird; correct?  8       <b>A To avoid the -- the destruction of</b>  9       <b>unexpected pullets, excess pullets, yes.</b>  10       Q And that is consistent with animal  11       welfare, avoiding the destruction of excess  12       pullets; correct?  13       <b>A From a -- from a broad perspective, it</b>  14       <b>is. Similar to avoiding euthanasia of male</b>  15       <b>chicks.</b>  16       Q Now, is the concept that a producer has  17       to make an estimate of the livability of the  18       pullets they put in the pullet house, and that  19       sometimes they have better livability than they  20       expected, so there are extra pullets?  21       <b>A What you're saying is sometimes the</b>  22       <b>producer cannot produce -- cannot predict the</b></p>	<p style="text-align: right;">308</p> <p>1       <b>A I do see that.</b>  2       Q Now, Dr. Gregory, is it your testimony  3       that you never discussed with Gene --  4       Did I call you Dr. Gregory? I  5       apologize.  6       Dr. Armstrong, is it your testimony  7       that you never discussed with Gene Gregory or Al  8       Pope the idea that the problem with backfilling  9       was that it was hurting egg prices?  10       <b>A I don't recall.</b>  11       Q All right. So you see this editorial's  12       dated August 12th, 2004; correct? Just as a  13       table setting.  14       <b>A (No response)</b>  15       Q Okay. And now you've pulled out your  16       letter, which I appreciate. That's Exhibit 11, I  17       believe; correct?  18       <b>A Yes. I was trying to think about the</b>  19       <b>timing of --</b>  20       Q Yeah.  21       <b>A -- of these events.</b>  22       Q So -- so but I've also handed you, and</p>
<p style="text-align: right;">307</p> <p>1       <b>supply.</b>  2       Q And sometimes --  3       <b>A I just -- I'm not an expert in that</b>  4       <b>area, but it is logical.</b>  5       Q Okay. And sometimes supply is less,  6       sometimes it's more, presumably?  7       <b>A That's logical.</b>  8       Q Okay. And when it's more, that means  9       there are these extra pullets that either have to  10       go somewhere or be destroyed. Is that true?  11       <b>A Yes.</b>  12       Q And backfilling is a way to put those  13       pullets somewhere as opposed to destroying them.  14       True?  15       <b>A That's consistent with what's written</b>  16       <b>here.</b>  17       Q But what Mr. Pope says is, "While that  18       may have been a good idea at one time, the  19       backfill provision, in my opinion, is  20       contributing or even causing some of the  21       disorderly marketing and poor egg prices that we  22       are currently experiencing." Do you see that?</p>	<p style="text-align: right;">309</p> <p>1       just keep this one out too, what we've marked  2       Armstrong Exhibit 30.  3       (Deposition Exhibit 30 was marked for  4       identification.)  5       <b>A Okay. So I've got August 12th,</b>  6       <b>October 4th, and then I've got a October 4th.</b>  7       Q Yeah. So -- so Armstrong Exhibit 30 is  8       Bates stamped UC_E00052448. Okay?  9       <b>A Mm-hmm.</b>  10       Q And can you identify that as a  11       letter -- as an email that you wrote on  12       August 4th, 2004?  13       <b>A I believe so, and I think Exhibit 11</b>  14       <b>would have been the attachment.</b>  15       Q The attached letter. So a little over  16       a month after Al Pope's editorial about  17       backfilling being a loophole of a hangman's  18       noose; correct?  19       <b>A That's correct.</b>  20       Q And then your cover letter -- well, let  21       me ask first, who was your email addressed to?  22       <b>A The email is addressed to the</b></p>

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<p style="text-align: right;">310</p> <p>1 <b>scientific committee.</b></p> <p>2 Q And you say -- you asked them to review</p> <p>3 the attached letter?</p> <p>4 <b>A Mm-hmm.</b></p> <p>5 Q You say, "Scotti assisted in providing</p> <p>6 the first draft of a letter asking producers to</p> <p>7 cease the practice of backfilling." Do you see</p> <p>8 that?</p> <p>9 <b>A I do.</b></p> <p>10 Q Then you say, "We need to support UEP</p> <p>11 in their quest to terminate this practice." Do</p> <p>12 you see that?</p> <p>13 <b>A I do.</b></p> <p>14 Q And that was your view at the time;</p> <p>15 right?</p> <p>16 <b>A That's correct.</b></p> <p>17 Q And what was of the basis for saying</p> <p>18 that UEP was on a quest to terminate this</p> <p>19 practice?</p> <p>20 <b>A I don't -- I don't recall.</b></p> <p>21 Q It's these editorials from Gene Gregory</p> <p>22 and Al Pope; correct?</p>	<p style="text-align: right;">312</p> <p>1 <b>remembering the exact details. I don't know how</b></p> <p>2 <b>it originated. But we could have had that</b></p> <p>3 <b>conversation; I don't know.</b></p> <p>4 Q All right. Do you recall what led up</p> <p>5 to you writing this editorial for United Voices?</p> <p>6 <b>A I do not.</b></p> <p>7 Q Was that -- do you recall how many</p> <p>8 editorials you wrote? In other words, is this</p> <p>9 the only one or were there others? Do you know?</p> <p>10 <b>A No, I was frequent -- I frequently</b></p> <p>11 <b>voiced my opinion, both in Feedstuffs to the</b></p> <p>12 <b>producers, trying -- with the goal of trying to</b></p> <p>13 <b>move them along, to continue to be proactive and</b></p> <p>14 <b>accept science-based guidelines.</b></p> <p>15 Q Do you know how many United Voices</p> <p>16 editorials you wrote while you were the chair of</p> <p>17 the scientific advisory committee?</p> <p>18 <b>A No.</b></p> <p>19 Q And I'm going to leave more of these</p> <p>20 questions for another counsel, but was the</p> <p>21 writing of these editorials part of what you</p> <p>22 were -- your consulting work for UEP?</p>
<p style="text-align: right;">311</p> <p>1 <b>A I don't recall.</b></p> <p>2 Q But it could have been at least partly</p> <p>3 that; correct?</p> <p>4 MR. KEALEY: Calls for speculation.</p> <p>5 <b>A I don't recall.</b></p> <p>6 MR. KEALEY: The witness has answered</p> <p>7 the question.</p> <p>8 Q Okay. You can put that aside.</p> <p>9 Dr. Armstrong, if you could now pull</p> <p>10 out Exhibit 12.</p> <p>11 <b>A Can you show it to me? That might help</b></p> <p>12 <b>expedite.</b></p> <p>13 Q It's a United Voices from May 2005</p> <p>14 where you wrote the editorial on the egg industry</p> <p>15 needing to be united.</p> <p>16 <b>A Got it. Okay.</b></p> <p>17 Q Now, Dr. Armstrong, Gene Gregory came</p> <p>18 to you and asked you to speak out against this</p> <p>19 competing program to the UEP certified program;</p> <p>20 correct?</p> <p>21 <b>A I don't recall. He may have. I don't</b></p> <p>22 <b>recall the details. I'm not -- I'm not</b></p>	<p style="text-align: right;">313</p> <p>1 <b>A My consulting work for UEP was not tied</b></p> <p>2 <b>to any one specific issue, but it wasn't the</b></p> <p>3 <b>direct work with the committee.</b></p> <p>4 Q And it encompassed things like --</p> <p>5 <b>A So I was --</b></p> <p>6 Q -- efficacy?</p> <p>7 <b>A So I was providing a crystal ball and</b></p> <p>8 <b>looking at the future for the industry as far as</b></p> <p>9 <b>animal welfare and social responsibility in the</b></p> <p>10 <b>food chain. But not in areas of supply chain or</b></p> <p>11 <b>others.</b></p> <p>12 Q And your consulting work encompassed</p> <p>13 using the media to advocate for animal welfare?</p> <p>14 <b>A And science-based guidelines.</b></p> <p>15 Q And in the middle of your editorial</p> <p>16 that we've looked at -- I think I only want to</p> <p>17 look at this one sentence -- you say, "In this</p> <p>18 context, how is it possible to justify selling</p> <p>19 eggs that are produced under less-than-optimal</p> <p>20 conditions for hen welfare?" Do you see that?</p> <p>21 <b>A I do.</b></p> <p>22 Q Is that true statement? I mean a --</p>

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<p style="text-align: right;">314</p> <p>1       <b>A</b>   That was my --</p> <p>2       <b>Q</b>   -- fair question?</p> <p>3       <b>A</b>   That was my opinion that I penned at</p> <p>4       that time.</p> <p>5       <b>Q</b>   But, Dr. Armstrong, haven't you</p> <p>6       repeatedly today told us that the committee</p> <p>7       understood that during this very period there</p> <p>8       were going to be hens, even under the UEP</p> <p>9       guidelines, that weren't receiving optimal</p> <p>10      conditions for hen welfare?</p> <p>11      MS. SUMNER: Objection.</p> <p>12      <b>A</b>   That's correct. But what you're --</p> <p>13      you're comparing apples and oranges. I'm talking</p> <p>14      about establishing a program that condones</p> <p>15      permanently, and doesn't transition.</p> <p>16      <b>Q</b>   That --</p> <p>17      <b>A</b>   So we had a committee -- we had a</p> <p>18      industry that was transitioning and moving into</p> <p>19      adopting these animal welfare guidelines. That's</p> <p>20      different.</p> <p>21      <b>Q</b>   So if that --</p> <p>22      <b>A</b>   And the committee agreed with me. So</p>	<p style="text-align: right;">316</p> <p>1       to the industry, not me. And not the committee.</p> <p>2       <b>You're comparing apples and oranges again.</b></p> <p>3       <b>Q</b>   Do you recall a time when Gene Gregory</p> <p>4       asked you to reach out to a customer of one of</p> <p>5       the egg suppliers who was planning to use this</p> <p>6       competing program?</p> <p>7       <b>A</b>   I don't recall, but that may have</p> <p>8       happened.</p> <p>9       <b>Q</b>   Do you recall Mr. Gregory asking you to</p> <p>10      reach out to Walmart?</p> <p>11      <b>A</b>   I recall going to Walmart for several</p> <p>12      purposes. And it -- it could very well, and it</p> <p>13      wouldn't have been unlikely that I talked with</p> <p>14      Gene before I went to Walmart. But I went to</p> <p>15      Walmart representing Michigan State, but I also</p> <p>16      went to Walmart as chair of the advisory</p> <p>17      committee and all that I am.</p> <p>18      <b>Q</b>   Did you go to Walmart and -- to try to</p> <p>19      convince Walmart not to leave the UEP program in</p> <p>20      favor of this competing program?</p> <p>21      <b>A</b>   I don't recall that precise detail.</p> <p>22      But I can tell you that I talked with numerous</p>
<p style="text-align: right;">315</p> <p>1       this was -- this was as my role as committee</p> <p>2       chair, as it says. Jeff Armstrong and scientific</p> <p>3       advisory committee.</p> <p>4       <b>Q</b>   So if that competing program didn't</p> <p>5       have any permanent requirements, then you</p> <p>6       wouldn't have had any problem with it?</p> <p>7       MR. KEALEY: Objection to form. Lack</p> <p>8       of foundation. Contrary to fact.</p> <p>9       <b>Q</b>   Was that -- I mean was that your</p> <p>10      concern with the competing program, that it had</p> <p>11      some permanent requirements?</p> <p>12      <b>A</b>   My -- my concern, our concern with a</p> <p>13      program, whatever program it may be, that did not</p> <p>14      have the minimum humane standards is that hen</p> <p>15      welfare would suffer.</p> <p>16      <b>Q</b>   And didn't that same concern apply to</p> <p>17      the UEP certified program at this time?</p> <p>18      MS. SUMNER: Objection.</p> <p>19      <b>A</b>   It was in transition. As I said</p> <p>20      repeatedly, the committee understood there was a</p> <p>21      transition. And we were not going to be able to</p> <p>22      move the industry immediately. The timing was up</p>	<p style="text-align: right;">317</p> <p>1       groups about the positive aspects of the UEP --</p> <p>2       UEP program. I did that publicly, I did that in</p> <p>3       meetings, and I did it privately.</p> <p>4       <b>Q</b>   And in addition to talking about the</p> <p>5       positive aspects of the UEP program, did you talk</p> <p>6       to Walmart about the negative aspects of this</p> <p>7       competing program?</p> <p>8       <b>A</b>   I don't recall.</p> <p>9       <b>Q</b>   Do you recall Mr. Gregory asking you to</p> <p>10      do that?</p> <p>11      <b>A</b>   I really don't recall.</p> <p>12      <b>Q</b>   Do you recall Mr. Gregory asking you to</p> <p>13      contact the USDA about concerns about this</p> <p>14      competing program?</p> <p>15      <b>A</b>   Yes, I do recall that.</p> <p>16      <b>Q</b>   And did you do that?</p> <p>17      <b>A</b>   I did.</p> <p>18      <b>Q</b>   And do you --</p> <p>19      <b>A</b>   I -- I believe I did. I -- I would</p> <p>20      have. Yes.</p> <p>21      <b>Q</b>   Was that part of your consulting work</p> <p>22      for UEP?</p>

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<p style="text-align: right;">318</p> <p>1       <b>A</b> It is difficult to determine what was</p> <p>2       <b>what. But if you look at the committee's view on</b></p> <p>3       <b>that program, I would have been speaking on</b></p> <p>4       <b>behalf of the committee. Because the committee</b></p> <p>5       <b>has a letter here that says they are not in favor</b></p> <p>6       <b>of a program that does not have a baseline of</b></p> <p>7       <b>humane production.</b></p> <p>8       Q So did you see part of your work on the</p> <p>9       committee as being to advocate against other</p> <p>10       programs that you didn't believe in?</p> <p>11       <b>A</b> My role on the committee, my role as a</p> <p>12       <b>person, my role as a consultant, was to advocate</b></p> <p>13       <b>for science. And to advocate for the humane</b></p> <p>14       <b>treatment of hens. If that felled against the</b></p> <p>15       <b>program, so be it.</b></p> <p>16       MR. OLSON: Well, just for the sake of</p> <p>17       the record I'll put this document in, Armstrong</p> <p>18       31.</p> <p>19       (Deposition Exhibit 31 was marked for</p> <p>20       identification.)</p> <p>21       MR. OLSON: And it's Bates stamped</p> <p>22       UE0547338 through 341.</p>	<p style="text-align: right;">320</p> <p>1       MR. OLSON: All right. At this time I</p> <p>2       think that's all I have so I'll pass the witness</p> <p>3       and hopefully won't need to circle back after UEP</p> <p>4       counsel has anything, and thank you very much for</p> <p>5       your time.</p> <p>6       THE WITNESS: You're welcome.</p> <p>7       MR. KEALEY: Sorry. Counsel, you've</p> <p>8       marked Exhibit 31.</p> <p>9       MR. OLSON: I just wanted him to</p> <p>10       authenticate it, which he did. He identified it</p> <p>11       as an email he wrote.</p> <p>12       MR. KEALEY: This one has four emails</p> <p>13       in it.</p> <p>14       Q Is that an email chain that you --</p> <p>15       <b>A Absolutely.</b></p> <p>16       Q -- transmitted?</p> <p>17       <b>A I remember -- I remember that because</b></p> <p>18       <b>we were getting our letterhead right, and that's</b></p> <p>19       <b>all strung together.</b></p> <p>20       MR. OLSON: Thank you.</p> <p>21       Should we go off the record?</p> <p>22       THE VIDEOGRAPHER: We're going off the</p>
<p style="text-align: right;">319</p> <p>1       Q And I'll just ask, Dr. Gregory, if</p> <p>2       you -- Dr. Armstrong, I apologize -- if you can</p> <p>3       identify this as an email that you wrote to Gene</p> <p>4       Gregory on August 4, 2008?</p> <p>5       <b>A Yes. I recall this.</b></p> <p>6       Q All right. Dr. Armstrong, what did you</p> <p>7       do to prepare for today's deposition?</p> <p>8       <b>A I read the three documents that Bill</b></p> <p>9       <b>provided, and I met with Bill yesterday. That</b></p> <p>10       <b>was all.</b></p> <p>11       Q Did -- before today had you ever spoken</p> <p>12       to counsel for UEP?</p> <p>13       <b>A I met these two individuals today for</b></p> <p>14       <b>the first time.</b></p> <p>15       Q And did you speak to these individuals</p> <p>16       today during the course of this deposition during</p> <p>17       breaks?</p> <p>18       <b>A Other than how was the drive to</b></p> <p>19       <b>Indianapolis, no.</b></p> <p>20       Q Do you know how your counsel selected</p> <p>21       the documents you were shown?</p> <p>22       <b>A I do not.</b></p>	<p style="text-align: right;">321</p> <p>1       record. The time is 3:32 p.m.</p> <p>2       (A recess was taken.)</p> <p>3       THE VIDEOGRAPHER: This is the</p> <p>4       beginning of Tape 6. The time is 3:43 p.m., and</p> <p>5       we are back on the record.</p> <p>6       FURTHER CROSS-EXAMINATION,</p> <p>7       QUESTIONS BY RACHEL E. SCHWARTZ:</p> <p>8       Q Good afternoon, Dr. Armstrong. My name</p> <p>9       is Rachel Schwartz. I'm the third person to</p> <p>10       speak with you today. I appreciate your patience</p> <p>11       and still being here this afternoon. I represent</p> <p>12       the plaintiffs in the Kansas litigation. Are you</p> <p>13       aware that there is litigation currently pending</p> <p>14       in the state of Kansas against UEP and others?</p> <p>15       <b>A Before yesterday and today I wasn't</b></p> <p>16       <b>aware that there were two or even much detail</b></p> <p>17       <b>beyond that.</b></p> <p>18       Q Fair enough.</p> <p>19       So it sounds like yesterday was the</p> <p>20       earliest time you would have heard about the</p> <p>21       Kansas litigation?</p> <p>22       <b>A Yes. But I've been aware of the</b></p>



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<p style="text-align: right;">322</p> <p>1 <b>litigation in bigger terms for some time.</b></p> <p>2 Q And today we are videotaping you here</p> <p>3 at your deposition; correct?</p> <p>4 <b>A Yes.</b></p> <p>5 Q You now understand that this is a video</p> <p>6 that could be played to a jury in the state of</p> <p>7 Kansas?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And you understand that you're still</p> <p>10 under oath at this time?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Very good. Right before we took a</p> <p>13 break, I wanted to follow up on one question.</p> <p>14 You have counsel here today with you; correct?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And are you personally paying for that</p> <p>17 counsel?</p> <p>18 <b>A No.</b></p> <p>19 Q Who is paying for your counsel?</p> <p>20 <b>A I believe Purdue University.</b></p> <p>21 Q And is that a situation that they would</p> <p>22 be reimbursing you or would they pay that</p>	<p style="text-align: right;">324</p> <p>1 this morning, do you recall a specific time when</p> <p>2 that conversation would have occurred with</p> <p>3 Mr. Gregory?</p> <p>4 <b>A I don't recall if those were the only</b></p> <p>5 <b>ones. I would assume you showed me all of them.</b></p> <p>6 <b>We only talked about it typically one time and</b></p> <p>7 <b>then I would send an email and say, "Gene, this</b></p> <p>8 <b>is what I propose."</b></p> <p>9 Q And in addition to the honoraria, there</p> <p>10 were -- you received other benefits of your work</p> <p>11 with UEP; correct? Including travel to</p> <p>12 conferences?</p> <p>13 <b>A Well, one would -- it would be</b></p> <p>14 <b>determined on whether one would call it a benefit</b></p> <p>15 <b>or not. There were times when you go into</b></p> <p>16 <b>Chicago at a meeting; I wouldn't call that a</b></p> <p>17 <b>benefit. But there were times when we met in</b></p> <p>18 <b>Arizona and we met in Hawaii. That was a nice</b></p> <p>19 <b>place to go.</b></p> <p>20 Q And UEP would pay all of the expenses</p> <p>21 associated with that travel; correct?</p> <p>22 <b>A Yes, that's common practice with</b></p>
<p style="text-align: right;">323</p> <p>1 directly?</p> <p>2 <b>A I think they're paying it directly</b></p> <p>3 <b>because the work that we're discussing was</b></p> <p>4 <b>started when I was at Purdue University, so</b></p> <p>5 <b>Purdue University opted to do this.</b></p> <p>6 Q Do you have any understanding as to</p> <p>7 whether any of the defendants in the litigation</p> <p>8 will be paying for your counsel in any way?</p> <p>9 <b>A I have no knowledge of -- other than</b></p> <p>10 <b>who's paying William Kealey, I don't -- I'm not</b></p> <p>11 <b>aware of others.</b></p> <p>12 Q Following up on discussion we had this</p> <p>13 morning, you had mentioned that you were paid for</p> <p>14 your work with UEP; correct?</p> <p>15 <b>A Yes. I talked about honoraria or</b></p> <p>16 <b>individual honorariums that were distributed to</b></p> <p>17 <b>committee members and myself. And then what I</b></p> <p>18 <b>did at one point with the amount of work that I</b></p> <p>19 <b>was doing beyond my service as chair, I</b></p> <p>20 <b>approached Gene about a retainer consultantship.</b></p> <p>21 <b>I don't remember how I worded it.</b></p> <p>22 Q Other than the documents we looked at</p>	<p style="text-align: right;">325</p> <p>1 <b>academics in that type of committee.</b></p> <p>2 Q So that would include flights; correct?</p> <p>3 <b>A Correct.</b></p> <p>4 Q Hotels; correct?</p> <p>5 <b>A Correct.</b></p> <p>6 Q Meals; correct?</p> <p>7 <b>A Correct.</b></p> <p>8 Q Would it also include social</p> <p>9 activities?</p> <p>10 <b>A Yes, yes. There were golf outings, I</b></p> <p>11 <b>think sometimes members took advantage of the</b></p> <p>12 <b>amenities at the resort. I don't remember the</b></p> <p>13 <b>details, but that was something that the members</b></p> <p>14 <b>did.</b></p> <p>15 Q Do you ever recall submitting any</p> <p>16 expenses that were not reimbursed related to that</p> <p>17 travel?</p> <p>18 <b>A I don't recall travel with UEP or</b></p> <p>19 <b>expenses with UEP that were not reimbursed.</b></p> <p>20 Q And did on occasion they also either</p> <p>21 offer or did your wife actually accept to go on</p> <p>22 these trips with you?</p>

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<p style="text-align: right;">326</p> <p>1 <b>A On occasion, yes. The spouse or</b>  2 <b>partner would go on the trips; that's correct.</b>  3 Q And that was, again, compensation that  4 was covered by UEP; they would pay to, for  5 instance, fly your wife out?  6 <b>A Yes. I would definitely qualify that</b>  7 <b>as an added benefit.</b>  8 Q And you mentioned a couple of the  9 locations you went to. To focus on some of the  10 nicer ones, Las Vegas was one of them; correct?  11 <b>A I assume so, if you say so. I don't</b>  12 <b>recall every location.</b>  13 Q You remembered Hawaii?  14 <b>A Yes.</b>  15 Q Did you remember Tucson in Arizona?  16 <b>A Yes.</b>  17 Q Do you remember a trip actually to  18 Kansas City for a meeting?  19 <b>A Yes. I've been to Kansas City a lot,</b>  20 <b>but I'm sure if it's in the record, it happened.</b>  21 Q And you also went to England; correct?  22 <b>A Yes. Gene and I went on a tour of</b></p>	<p style="text-align: right;">328</p> <p>1 <b>speak.</b>  2 Q But it is a form of payment to you;  3 correct?  4 MR. DAVIS: Objection.  5 <b>A It clearly -- I was paid a</b>  6 <b>retainer/consulting fee separate of my committee</b>  7 <b>work. I was paid an honorarium as a committee</b>  8 <b>member along with everyone else, the same amount.</b>  9 <b>The rest of this was reimbursement of expenses.</b>  10 <b>Was it a benefit for my wife to go along? Yes.</b>  11 <b>So whether I call it compensation? I would not</b>  12 <b>because I wouldn't report that as income. So I'm</b>  13 <b>not understanding the point you're getting at.</b>  14 Q The honoraria would not be something  15 you would have reported at income?  16 <b>A No, no, no. Reimbursement of travel</b>  17 <b>expenses.</b>  18 Q When we look at the honoraria, the  19 travel expenses, those were provided to all the  20 members of the scientific advisory committee;  21 correct?  22 <b>A Absolutely. No one was treated</b></p>
<p style="text-align: right;">327</p> <p>1 <b>egg -- different production facilities. Yes.</b>  2 Q And it's fair to say you would consider  3 those types of benefits provided by UEP as a form  4 of compensation?  5 MR. DAVIS: Objection.  6 <b>A I would -- I would consider them</b>  7 <b>reimbursement of expenses. I was going based on</b>  8 <b>work. Universities really encourage their</b>  9 <b>faculty and administrators, who are also faculty,</b>  10 <b>to interact with companies and committees of this</b>  11 <b>nature. And it's also part of their work, and it</b>  12 <b>builds their reputation. So traveling to a</b>  13 <b>location to tour egg facilities was part of my</b>  14 <b>work. It was something -- I think Michigan State</b>  15 <b>was my employer at the time. It's something that</b>  16 <b>Michigan State would have covered if UEP hadn't</b>  17 <b>covered it.</b>  18 Q But Michigan State did not; correct?  19 UEP covered it.  20 <b>A That's correct. Right. And Michigan</b>  21 <b>State would expect us to have that type of trip</b>  22 <b>covered by a partner or collaborator, so to</b></p>	<p style="text-align: right;">329</p> <p>1 <b>differently.</b>  2 Q And it is, therefore, not accurate to  3 say that the committee members were unpaid;  4 correct?  5 MR. DAVIS: Objection.  6 <b>A The committee -- the committee -- the</b>  7 <b>committee members were not paid a consulting fee.</b>  8 <b>They were -- they were given an honorarium and</b>  9 <b>their expenses were paid, which is a common</b>  10 <b>practice in academic circles.</b>  11 Q And, sir, I'm not asking if it was a  12 common practice. I'm asking whether you would  13 agree that a statement that the scientific  14 advisory committee was unpaid is not a true  15 statement.  16 MR. DAVIS: Objection to form.  17 <b>A That's for someone else to determine.</b>  18 <b>All I can tell you is what happened.</b>  19 Q Did you ever claim that members of the  20 scientific advisory committee were unpaid?  21 <b>A I may have. I'm not sure. But I can</b>  22 <b>tell you that the committee members did this</b></p>

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<p style="text-align: right;">330</p> <p>1 because of their profession and their interest to</p> <p>2 do it, not because they received an honorarium or</p> <p>3 got to go to a certain place. And there was no</p> <p>4 mention of honorarium or honoraria at the</p> <p>5 beginning. All I told the committee members is</p> <p>6 that your expenses will be reimbursed.</p> <p>7 Q Let me hand to you what we've justified</p> <p>8 marked as Exhibit 32.</p> <p>9 (Deposition Exhibit 32 was marked for</p> <p>10 identification.)</p> <p>11 Q This is Bates NL002214. And does this</p> <p>12 letter look familiar to you?</p> <p>13 A It's from my office, so it is my</p> <p>14 signature and it is from me, yes.</p> <p>15 Q And it shows a date at the top of</p> <p>16 August 14th, 2003; correct?</p> <p>17 A That's correct.</p> <p>18 Q And if you -- do you see in the center</p> <p>19 of that first page where it says "Response to</p> <p>20 first statement"; do you see that?</p> <p>21 A I do.</p> <p>22 Q And if you look two paragraphs below</p>	<p style="text-align: right;">332</p> <p>1 several times, and I think Gene was using the</p> <p>2 definition of "paid" the same as I was; that the</p> <p>3 committee's expenses were reimbursed. I don't</p> <p>4 know when the first honorarium was paid, whether</p> <p>5 it was paid before August 14th of 2003 or not;</p> <p>6 probably was.</p> <p>7 But in general terms, if you're -- if</p> <p>8 you're paid an honorarium, that is -- that is not</p> <p>9 something that I consider as pay. In fact, in</p> <p>10 the guidelines for this California State</p> <p>11 University system, and I have very strict</p> <p>12 reportings of any gift over \$40 or \$50,</p> <p>13 honorarium -- an honorarium to me is considered</p> <p>14 an exception because it is a typical practice for</p> <p>15 universities and university individuals to</p> <p>16 participate in activities that are related to</p> <p>17 their profession.</p> <p>18 Q But again, sir, to the best of your</p> <p>19 knowledge, it's something you would have reported</p> <p>20 on your taxes and paid taxes on?</p> <p>21 A To the best of my knowledge.</p> <p>22 Q And are you aware that to this day UEP</p>
<p style="text-align: right;">331</p> <p>1 that, can you read the sentence that starts off</p> <p>2 "None of the committee members." That's the last</p> <p>3 sentence in that second paragraph.</p> <p>4 A I would prefer to take a moment and</p> <p>5 read the entire memo since I haven't seen this in</p> <p>6 years.</p> <p>7 Okay. I'm finished.</p> <p>8 Q And let me read the sentence for you.</p> <p>9 It says, "None of the committee members were paid</p> <p>10 by UEP or anyone else in the ag industry for</p> <p>11 their services."</p> <p>12 Did I read that sentence correctly?</p> <p>13 A That is correct.</p> <p>14 Q This is, again, an August 14, 2003,</p> <p>15 letter that you believe you wrote?</p> <p>16 A I did write -- I did write this.</p> <p>17 Q And are you aware -- you can put that</p> <p>18 aside.</p> <p>19 Are you aware as to whether UEP ever</p> <p>20 publicly stated that members of the scientific</p> <p>21 advisory committee were unpaid?</p> <p>22 A Oh, I think I recall Gene saying that</p>	<p style="text-align: right;">333</p> <p>1 still has on their website that scientific</p> <p>2 advisory committee members are unpaid?</p> <p>3 MR. DAVIS: Objection.</p> <p>4 A I'm not aware what's on the website,</p> <p>5 but my definition of pay is consistent with</p> <p>6 what's in this -- in Point 32. So we can</p> <p>7 continue to discuss our difference in description</p> <p>8 of pay, if you want.</p> <p>9 Q Let me go ahead and mark as Exhibit</p> <p>10 33 --</p> <p>11 (Deposition Exhibit 33 was marked for</p> <p>12 identification.)</p> <p>13 Q And, sir, let me represent to you that</p> <p>14 I printed this off from the UEP website last week</p> <p>15 before coming out here.</p> <p>16 A Mm-hmm.</p> <p>17 Q Have you looked at the animal welfare</p> <p>18 part of the UEP website?</p> <p>19 A I couldn't tell you when. I'm sure I</p> <p>20 did at some point.</p> <p>21 Q Fair enough. And on that first page</p> <p>22 you see it's got United Egg Producers at the top</p>

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<p style="text-align: right;">334</p> <p>1 of it; do you see that?</p> <p>2 <b>A I do.</b></p> <p>3 Q And then below that there's a section</p> <p>4 entitled Animal Welfare; do you see that?</p> <p>5 <b>A I do.</b></p> <p>6 Q And if you look at the fourth</p> <p>7 paragraph, the one that starts with "The process</p> <p>8 for this review"; do you see that?</p> <p>9 <b>A Yes.</b></p> <p>10 Q And at the end of that sentence it says</p> <p>11 that you were asked if "he would be interested in</p> <p>12 forming his own scientific committee of which he</p> <p>13 could select all of the members without pay." Do</p> <p>14 you see that?</p> <p>15 <b>A No. I've lost you. Where are you?</b></p> <p>16 Q Sorry. That first sentence of the --</p> <p>17 <b>A Oh, yeah. I see it. "Asking if he</b></p> <p>18 <b>would be interested in forming his own scientific</b></p> <p>19 <b>committee of which he could select all the</b></p> <p>20 <b>members without pay."</b></p> <p>21 Q And would your consulting relationship,</p> <p>22 with UEP for example, the invoices, would those</p>	<p style="text-align: right;">336</p> <p>1 MS. SCHWARTZ: So Exhibit 34 is</p> <p>2 RA0067419.</p> <p>3 Q And as you're looking through this, is</p> <p>4 this the document that you've seen before?</p> <p>5 MR. KEALEY: Counsel, this appears to</p> <p>6 be several documents. Is this a unitary</p> <p>7 document? Because it looks like you've got a</p> <p>8 preprinted document and then later in the back</p> <p>9 you've got a publication, or two or three.</p> <p>10 <b>A What's the date on this document?</b></p> <p>11 Q I don't believe there is a date on the</p> <p>12 document.</p> <p>13 MR. KEALEY: At the back the</p> <p>14 publications have dates on them. You've got</p> <p>15 bundled documents here. You can't -- you've got</p> <p>16 to be specific what you're asking the witness</p> <p>17 about.</p> <p>18 <b>A Was this compiled as a single UEP</b></p> <p>19 <b>document?</b></p> <p>20 Q It was. And this entire document is on</p> <p>21 the website if you click on that.</p> <p>22 <b>A So this very far right?</b></p>
<p style="text-align: right;">335</p> <p>1 have been public?</p> <p>2 <b>A I did not make them public, but I did</b></p> <p>3 <b>inform the committee members that I was</b></p> <p>4 <b>consulting on a one-on-one basis because I did</b></p> <p>5 <b>not want them to be surprised.</b></p> <p>6 Q And if you turn to the second page of</p> <p>7 this document. You'll see on the right-hand side</p> <p>8 there's a little tiny version of the egg industry</p> <p>9 and animal welfare. Do you see that on the far</p> <p>10 right-hand side?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And have you seen that document before?</p> <p>13 <b>A Yes.</b></p> <p>14 Q It's hard to tell --</p> <p>15 <b>A Not for some time, but I'm sure I've</b></p> <p>16 <b>seen -- I know I've seen it. I would have</b></p> <p>17 <b>received a copy of it.</b></p> <p>18 Q Let me go ahead and mark as Exhibit 34</p> <p>19 this document. And a version of this has been</p> <p>20 produced in the Kansas litigation.</p> <p>21 (Deposition Exhibit 34 was marked for</p> <p>22 identification.)</p>	<p style="text-align: right;">337</p> <p>1 Q Correct.</p> <p>2 <b>A Right, right.</b></p> <p>3 Q This entire document is there.</p> <p>4 <b>A I don't know the date of this. I am</b></p> <p>5 <b>familiar with some of the documents, more than</b></p> <p>6 <b>others, from a recognition perspective. I am</b></p> <p>7 <b>sure that -- I can't recall specifically, but I'm</b></p> <p>8 <b>sure I've seen this. But I'll be happy to answer</b></p> <p>9 <b>any questions.</b></p> <p>10 Q Fair enough. I'll give you -- I just</p> <p>11 have a few questions about this document, so I'm</p> <p>12 happy to give you the chance to read it when we</p> <p>13 get to those specific sections.</p> <p>14 If you turn to the second page. And I</p> <p>15 believe you had testified this morning that it</p> <p>16 was very important to be up front with the public</p> <p>17 about the scientific advisory guidelines;</p> <p>18 correct?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And if you look at the third bullet</p> <p>21 point on that second page, and that's with 420 as</p> <p>22 a Bates label at the bottom, do you see that</p>

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<p style="text-align: right;">338</p> <p>1 third bullet point?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And again that third bullet point says,</p> <p>4 in part, that an independent unpaid scientific</p> <p>5 advisory committee recommended industry-wide</p> <p>6 guidelines; correct?</p> <p>7 <b>A Correct.</b></p> <p>8 Q And if you turn to the second page --</p> <p>9 to the next page of this document, I want to give</p> <p>10 you a chance to read that last paragraph on that</p> <p>11 page that ends with 421.</p> <p>12 <b>A Yes.</b></p> <p>13 Q Let's take those sentences one by one.</p> <p>14 The first sentence says, "Nevertheless, the UEP</p> <p>15 board of directors approved a schedule for</p> <p>16 implementing every one of the committee's</p> <p>17 recommendations." Do you see that?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And the rest of that paragraph reads,</p> <p>20 "As the years have gone by, the committee has</p> <p>21 reviewed additional welfare issues as they arose.</p> <p>22 UEP has never rejected a recommendation by the</p>	<p style="text-align: right;">340</p> <p>1 <b>that gets back to the previous discussion. Lots</b></p> <p>2 <b>of ups and downs. That's why I said from a macro</b></p> <p>3 <b>perspective. And you'll have to ask the writer</b></p> <p>4 <b>of this what they meant, but I'm just telling you</b></p> <p>5 <b>what I think.</b></p> <p>6 Q So --</p> <p>7 <b>A Was the molting recommendation</b></p> <p>8 <b>accepted? Yes.</b></p> <p>9 <b>Was the space recommendation accepted?</b></p> <p>10 <b>Yes.</b></p> <p>11 <b>Was the beak trimming recommendation</b></p> <p>12 <b>accepted? Yes.</b></p> <p>13 <b>You go down the line from a macro</b></p> <p>14 <b>perspective, they were accepted. And that in</b></p> <p>15 <b>itself is a huge accomplishment because there</b></p> <p>16 <b>were significant numbers of producers that did</b></p> <p>17 <b>not want to go in that direction.</b></p> <p>18 Q But it's fair to say that UEP did not</p> <p>19 implement all of the recommendations by the</p> <p>20 scientific advisory committee; correct?</p> <p>21 MR. DAVIS: Objection.</p> <p>22 <b>A It's fair to say that the UEP has had</b></p>
<p style="text-align: right;">339</p> <p>1 committee, a remarkable track record that</p> <p>2 reflects the industry's determination to follow</p> <p>3 the best available science." Do you see that?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And do you believe that to be a true</p> <p>6 statement?</p> <p>7 <b>A From the macro view, yes.</b></p> <p>8 Q Before we took a break you had said</p> <p>9 that the producer committee had, quote, pushed</p> <p>10 back on recommendations; is that fair to say?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And sitting here today do you recall</p> <p>13 any recommendations that did not make their way</p> <p>14 into the producer guidelines?</p> <p>15 <b>A That's a different question. When --</b></p> <p>16 <b>when I make -- when I look at the --</b></p> <p>17 <b>My view of that sentence, which I did</b></p> <p>18 <b>not write, "has never rejected a recommendation</b></p> <p>19 <b>by its committee," the committee -- the UEP and</b></p> <p>20 <b>animal welfare committee, they've always accepted</b></p> <p>21 <b>our animal care science-based guidelines.</b></p> <p>22 <b>Now implementation, what went in there,</b></p>	<p style="text-align: right;">341</p> <p>1 <b>an implementation plan that's had its transitions</b></p> <p>2 <b>and ups and downs, and the committee has been</b></p> <p>3 <b>watching it over and over.</b></p> <p>4 Q And let me ask my question again. My</p> <p>5 question was, it's fair to say that UEP did not</p> <p>6 implement all of the recommendations by the</p> <p>7 scientific advisory committee; correct?</p> <p>8 MR. DAVIS: Objection.</p> <p>9 <b>A I gave you the previous answer.</b></p> <p>10 Q And, sir, I'm just trying to be very</p> <p>11 specific. I think you're trying to make a</p> <p>12 distinction between a recommendation being</p> <p>13 approved or rejected and actually implementing.</p> <p>14 So let me ask again.</p> <p>15 There have been times that the UEP</p> <p>16 scientific advisory committee has made</p> <p>17 recommendations that were not implemented by UEP</p> <p>18 and the producer committee; correct?</p> <p>19 MR. DAVIS: Objection.</p> <p>20 MR. KEALEY: Asked and answered.</p> <p>21 <b>A By design there was a transition and a</b></p> <p>22 <b>phase-in in implementation. So did the UEP</b></p>

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<p style="text-align: right;">342</p> <p>1 immediately implement the space allowance? No</p> <p>2 Did the scientific advisory committee</p> <p>3 accept that? Yes.</p> <p>4 Q So, again, when the recommendation was</p> <p>5 made by the scientific advisory committee, that</p> <p>6 was not immediately implemented by UEP; that's</p> <p>7 fair to say?</p> <p>8 MR. KEALEY: Counsel, you're arguing</p> <p>9 with the witness. Please move on.</p> <p>10 MR. DAVIS: Objection to form.</p> <p>11 A It's fair to say that there was a</p> <p>12 transition, and the committee did not get</p> <p>13 involved in the timing of implementation; I've</p> <p>14 repeated that over and over again. And the</p> <p>15 committee was very content to see the percentage</p> <p>16 improvement in animal welfare as this tremendous</p> <p>17 change was brought on this industry.</p> <p>18 Q If you turn to the next page which has</p> <p>19 at the bottom Bates No. 422, you'll see on the</p> <p>20 left-hand side a heading that says UEP Certified</p> <p>21 Science in Action. Do you see that?</p> <p>22 A Mm-hmm.</p>	<p style="text-align: right;">344</p> <p>1 bottom of it. It's Bates range RA0067425. Do</p> <p>2 you see that document?</p> <p>3 A Yes.</p> <p>4 Q And if you look four paragraphs down on</p> <p>5 that document, do you see that it says "The UEP</p> <p>6 certified program for cage production provides</p> <p>7 assurance that hens receive adequate space,</p> <p>8 nutritious food, clean water, proper lighting,</p> <p>9 and fresh air daily, as well as improves the</p> <p>10 flocks' livability and egg production rates." Do</p> <p>11 you see that?</p> <p>12 A Yes.</p> <p>13 Q Do you believe that that is a true</p> <p>14 statement?</p> <p>15 A Within the context of the transition</p> <p>16 and implementation of the guidelines, the</p> <p>17 committee was satisfied with the program as it</p> <p>18 was being implemented. Was it perfect from an</p> <p>19 animal welfare perspective? No.</p> <p>20 Q And if you look at what appears to be</p> <p>21 the footnote at the bottom of that document --</p> <p>22 and I'll give you a chance to read that.</p>
<p style="text-align: right;">343</p> <p>1 Q And if you look at the third paragraph</p> <p>2 under that section, do you see that paragraph?</p> <p>3 A Yes.</p> <p>4 Q And it says, "To participate in the</p> <p>5 program, each producer must apply UEP's animal</p> <p>6 care standards to all his production. Consumers</p> <p>7 who see the UEP certified seal on an egg carton</p> <p>8 have assurance that the producer who packed those</p> <p>9 eggs treats all hens under his control with the</p> <p>10 level of care recommended by the scientific</p> <p>11 experts." Is that a true statement?</p> <p>12 A I believe it is true. It goes back to</p> <p>13 the point I made previously. The committee</p> <p>14 recognized that there was a transition in</p> <p>15 implementing the guidelines. You're asking the</p> <p>16 same question in a different way.</p> <p>17 Q I'm just asking you to confirm that you</p> <p>18 believe that's true to the best of your</p> <p>19 knowledge.</p> <p>20 A Under the context that I provided.</p> <p>21 Q If you keep turning in this document</p> <p>22 and you turn to page -- what has page 6 at the</p>	<p style="text-align: right;">345</p> <p>1 A Yes.</p> <p>2 Q And I just want to ask in part, the</p> <p>3 scientific advisory committee mandated that hens</p> <p>4 have continuous access to fresh air and water;</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q And the way that UEP was able to ensure</p> <p>8 that UEP members followed that was through the</p> <p>9 audit; correct?</p> <p>10 A That's correct.</p> <p>11 Q And if you turn to page 8 of this</p> <p>12 document. This appears to be a question and</p> <p>13 answer page; do you see that?</p> <p>14 A Mm-hmm. Yes.</p> <p>15 Q One of the questions is: What does</p> <p>16 United Egg Producers Certified mean? Do you see</p> <p>17 that?</p> <p>18 A Yes.</p> <p>19 Q And do you see that part of the answer</p> <p>20 to that is that a farm must commit to, quote,</p> <p>21 meet 100 percent of the requirements; do you see</p> <p>22 that?</p>



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<p style="text-align: right;">346</p> <p>1       <b>A I do.</b></p> <p>2       Q And do you believe that's an accurate</p> <p>3 statement?</p> <p>4       <b>A Yes, I believe it is an accurate</b></p> <p>5 <b>statement within the context of a transitioning</b></p> <p>6 <b>program.</b></p> <p>7       Q And I understand that the program</p> <p>8 changed over time, but is it accurate to say at</p> <p>9 whatever the guidelines were at that point in</p> <p>10 time, a producer had to meet 100 percent of the</p> <p>11 requirements to be UEP certified?</p> <p>12       MR. DAVIS: Objection. Lacks</p> <p>13 foundation.</p> <p>14       <b>A You'd have to look at the audit, and</b></p> <p>15 <b>there were some things where there were points</b></p> <p>16 <b>and there were some things where they were "yes"</b></p> <p>17 <b>or "no." I don't know the details of the audit.</b></p> <p>18 <b>So you're asking a very complicated question that</b></p> <p>19 <b>I'm not equipped to answer.</b></p> <p>20       Q Sir, you would expect that a consumer</p> <p>21 who had questions about the UEP certified program</p> <p>22 might go to the UEP website to learn about it;</p>	<p style="text-align: right;">348</p> <p>1       Q Do you have an understanding as to why</p> <p>2 UEP would make information about the UEP</p> <p>3 certified program available on its website?</p> <p>4       <b>A Anyone publishes their information on a</b></p> <p>5 <b>website these days; it's the best practice.</b></p> <p>6       Q So that people who might have questions</p> <p>7 about it could go and learn about a program if</p> <p>8 they wanted to; correct?</p> <p>9       MR. DAVIS: Objection. Lacks</p> <p>10 foundation.</p> <p>11       <b>A Correct.</b></p> <p>12       Q So, sir, your testimony this morning</p> <p>13 was that the scientific advisory committee had no</p> <p>14 responsibility for creating the audit; correct?</p> <p>15       <b>A Well, I think I said at the time that I</b></p> <p>16 <b>recall, and I think as we looked at some other</b></p> <p>17 <b>documents it was clear, and, as I said, there was</b></p> <p>18 <b>always a back and forth where the committee paid</b></p> <p>19 <b>attention to what the producer committee was</b></p> <p>20 <b>doing from a macro level to make sure there were</b></p> <p>21 <b>not issues. We just discussed ammonia and other</b></p> <p>22 <b>issues where the committee -- you see evidence</b></p>
<p style="text-align: right;">347</p> <p>1 correct?</p> <p>2       MR. DAVIS: Objection.</p> <p>3       MR. KEALEY: Object to the form of the</p> <p>4 question. This witness is here to talk about his</p> <p>5 personal experience, counsel. Please limit your</p> <p>6 questions to Dr. Armstrong's personal experience.</p> <p>7       Q You can answer the question, sir.</p> <p>8       MR. DAVIS: Objection. Lacks</p> <p>9 foundation.</p> <p>10       MR. KEALEY: Please establish a</p> <p>11 foundation of personal knowledge for which</p> <p>12 consumer who is, by definition, somebody other</p> <p>13 than Dr. Armstrong, you're asking him to testify</p> <p>14 about. And explain to me, counsel, how this is</p> <p>15 not calling for speculation about your</p> <p>16 hypothetical consumer.</p> <p>17       Q Sir, do you have an understanding --</p> <p>18       MR. KEALEY: Are you withdrawing the</p> <p>19 question?</p> <p>20       MS. SCHWARTZ: I am. I'll ask another</p> <p>21 one.</p> <p>22       MR. KEALEY: Thank you.</p>	<p style="text-align: right;">349</p> <p>1 <b>that the committee was watching and paid</b></p> <p>2 <b>attention. But the audit committee -- the</b></p> <p>3 <b>companies created the audit process, as far as I</b></p> <p>4 <b>know.</b></p> <p>5       Q Correct. So when I'd asked whether the</p> <p>6 UEP scientific committee had responsibility for</p> <p>7 creating the audit, the answer is no; correct?</p> <p>8       MR. DAVIS: Objection.</p> <p>9       <b>A The best of my recollection.</b></p> <p>10       Q And did the UEP scientific advisory</p> <p>11 committee help create the point totals in the</p> <p>12 audit?</p> <p>13       <b>A I don't recall in detail. You would</b></p> <p>14 <b>have to ask some of the other committee members.</b></p> <p>15 <b>But I vaguely recall that committee members were</b></p> <p>16 <b>asked to comment. Obviously, previous counsel</b></p> <p>17 <b>presented evidence where the committee members</b></p> <p>18 <b>commented on audit.</b></p> <p>19       <b>We always had a discussion or an update</b></p> <p>20 <b>on what was going on at the audits at our animal</b></p> <p>21 <b>welfare committee because the committee was</b></p> <p>22 <b>concerned about animal welfare, thus our interest</b></p>

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<p style="text-align: right;">350</p> <p>1 in a program that, by its structure, would permit</p> <p>2 inhumane practice. So to say that the committee</p> <p>3 was not connected to what was going on would not</p> <p>4 be a correct statement.</p> <p>5 To say that the committee did not</p> <p>6 create the audit would be a correct statement.</p> <p>7 Did the committee have faith and believe that our</p> <p>8 science-based guidelines were being implemented</p> <p>9 in a reasonable manner in a transition -- a huge</p> <p>10 transition? Yes.</p> <p>11 Q And, sir, do you recall being told by</p> <p>12 Gene Gregory that the committee should have been</p> <p>13 more respectful with regard to the audit</p> <p>14 procedures UEP had put together?</p> <p>15 MR. DAVIS: Objection.</p> <p>16 A Would you repeat that?</p> <p>17 Q Sure.</p> <p>18 (The reporter read the requested</p> <p>19 question.)</p> <p>20 A I don't recall that. But I wouldn't be</p> <p>21 surprised if he had said that.</p> <p>22 Q And was it your understanding that</p>	<p style="text-align: right;">352</p> <p>1 was exactly how you put it.</p> <p>2 Q My question was, sir, do you recall if</p> <p>3 you ever received this letter from Mr. Gregory?</p> <p>4 A I do not.</p> <p>5 MR. KEALEY: You said -- so you're</p> <p>6 saying this is a letter from Mr. Gregory? That's</p> <p>7 what you're saying?</p> <p>8 MR. OLSON: She's asking that.</p> <p>9 MR. KEALEY: No. She's representing</p> <p>10 this is a letter from Mr. Gregory and asking if</p> <p>11 the witness received it.</p> <p>12 Is this a letter from Mr. Gregory?</p> <p>13 MS. SCHWARTZ: Let me ask the</p> <p>14 witness --</p> <p>15 MR. KEALEY: The witness isn't</p> <p>16 Mr. Gregory, so he can't testify whether this</p> <p>17 letter was signed or sent.</p> <p>18 MS. SCHWARTZ: He can if he received</p> <p>19 it.</p> <p>20 Q So, sir, let me ask you. On the front</p> <p>21 page of this document, it is dated March 13th of</p> <p>22 2003, and it appears to be a letter addressed to</p>
<p style="text-align: right;">351</p> <p>1 Mr. Gregory believed that decisions about the</p> <p>2 audit were supposed to be made by UEP and the</p> <p>3 auditing committees?</p> <p>4 MR. DAVIS: Objection. Calls for</p> <p>5 speculation.</p> <p>6 A I cannot answer that. I cannot answer</p> <p>7 what Mr. Gregory was thinking or how he handled</p> <p>8 that.</p> <p>9 Q Go ahead and mark as Exhibit 35.</p> <p>10 (Deposition Exhibit 35 was marked for</p> <p>11 identification.)</p> <p>12 Q This is UE0660000.</p> <p>13 Sir, do you recall if you ever received</p> <p>14 this letter from Mr. Gregory?</p> <p>15 A One moment, please.</p> <p>16 MR. KEALEY: Counsel, this is an</p> <p>17 unsigned letter not on stationery. Are you</p> <p>18 representing that this document was absolutely</p> <p>19 sent?</p> <p>20 MS. SCHWARTZ: Sir, I've asked the</p> <p>21 witness if he remembers receiving this.</p> <p>22 MR. KEALEY: No. I don't think that</p>	<p style="text-align: right;">353</p> <p>1 your attention; correct?</p> <p>2 A I see that it's addressed to me. I do</p> <p>3 not recall receiving this letter.</p> <p>4 Q That was my question for you.</p> <p>5 Do you recall having any discussions</p> <p>6 with Mr. Gregory about his disappointment --</p> <p>7 (A discussion was held off the record.)</p> <p>8 Q Let me start over with the question.</p> <p>9 We had mentioned earlier that you had</p> <p>10 come to Kansas City for a meeting; correct?</p> <p>11 A (Nodding affirmatively)</p> <p>12 Q Is that a "yes," sir?</p> <p>13 A Apparently. As I answered before,</p> <p>14 apparently I did. I don't recall all the UEP</p> <p>15 meetings, but I've been to Kansas City for many</p> <p>16 meetings.</p> <p>17 Q Do you recall having any discussion</p> <p>18 with Mr. Gregory about his disappointment with a</p> <p>19 critique by the committee of the audit</p> <p>20 procedures?</p> <p>21 A I do not recall the specific instance</p> <p>22 that you're talking about, but I can tell you in</p>

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<p style="text-align: right;">354</p> <p>1 <b>general it was not uncommon for there to be</b>  2 <b>tension and differences of opinion with Gene and</b>  3 <b>committee members back and forth.</b>  4 Q And specifically with regard to the  5 audit, do you have any specific recollection of  6 conversations with Mr. Gregory about the audit?  7 <b>A I don't have specific -- I don't recall</b>  8 <b>specific items related to that. That doesn't</b>  9 <b>mean it didn't occur.</b>  10 Q Now, this morning when we looked at --  11 this morning and this afternoon when we looked at  12 the guidelines and the recommendations from the  13 scientific advisory committee, you had testified  14 that these were the minimum requirements for a  15 producer to be a humane producer; correct?  16 <b>A Mm-hmm. Once implemented.</b>  17 Q And did you believe that with regard to  18 each one of the recommendations?  19 <b>A The committee believes that with regard</b>  20 <b>to all of the recommendations and some are</b>  21 <b>more -- the committee would be more stringent on</b>  22 <b>some than others, but that's in the context of</b></p>	<p style="text-align: right;">356</p> <p>1 Q Let me start over. At any specific  2 time the scientific advisory committee had put  3 forth their best scientific recommendations for  4 being a humane producer; correct?  5 <b>A We put forward the minimum guidelines</b>  6 <b>for humane housing in egg production in caged</b>  7 <b>systems first, then we developed other</b>  8 <b>guidelines.</b>  9 Q And a producer who was not following  10 those guidelines at that time in the view of the  11 committee was not a humane producer; correct?  12 MR. DAVIS: Objection.  13 <b>A That is not a correct statement. The</b>  14 <b>way I would phrase it is that a producer that did</b>  15 <b>not pass the audit based on the guidelines as</b>  16 <b>they were at that point being implemented</b>  17 <b>because, again, you -- we didn't go immediately</b>  18 <b>to 67 square inches, we didn't go immediately to</b>  19 <b>a feed -- a non-feed-withdrawal molt. So the</b>  20 <b>committee recognized that there was an</b>  21 <b>implementation period and a transition.</b>  22 Q Let me hand you what I've marked as</p>
<p style="text-align: right;">355</p> <p>1 <b>the full scientific guidelines.</b>  2 Q But it's fair to say a producer who is  3 not meeting one of those requirements in the view  4 of the committee is not a humane producer?  5 <b>A Again, within the context of a</b>  6 <b>transition, there were grandfathered facilities,</b>  7 <b>there were time line implementations. So, again,</b>  8 <b>within the context, the committee is pleased</b>  9 <b>where we ended up, and it took a transition to</b>  10 <b>get there.</b>  11 Q And I understand that, but at any given  12 point in time there was a set of recommendations  13 by the scientific advisory committee; correct?  14 <b>A That's correct.</b>  15 Q And those may have changed over time  16 upon reflection by the committee; correct?  17 <b>A By and large they changed, the macro</b>  18 <b>aspect of them changed very little.</b>  19 Q But at any given time, it was the  20 scientific advisory committee's best scientific  21 recommendations --  22 (A discussion was held off the record.)</p>	<p style="text-align: right;">357</p> <p>1 Exhibit 36. This was previously marked in the  2 Kansas litigation as Exhibit 495.  3 (Deposition Exhibit 36 was marked for  4 identification.)  5 Q Sir, let's just --  6 And, sir, I'll give you the chance to  7 look at this whole document, but if you'll turn  8 to page 3, this is where I want -- the third page  9 of this document, that's where I wanted to start  10 with questions.  11 MS. SUMNER: I just want to note for  12 the record, Rachel, that this is a highly  13 confidential document that was produced by  14 Sparboe, and I'm not sure that under the terms of  15 the protective order that you are permitted to  16 show this to this witness.  17 MR. DAVIS: The witness has signed the  18 protective order in this case giving him access  19 to the documents in this case. This is relevant  20 to his testimony here today.  21 MR. KEALEY: Are you going to contend  22 that this witness --</p>

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<p style="text-align: right;">358</p> <p>1 MS. SUMNER: It's your call. It's not 2 our document. But I'm just -- I have not gone 3 back and looked at the protective order, and it's 4 not clear to me if Sparboe -- even he falls 5 within the category of people who are permitted 6 to look at it even if he signed the order given 7 who he is and what this document is. 8 UNIDENTIFIED TELEPHONIC SPEAKER: Can 9 we get a Bates number on the phone, please? 10 MR. DAVIS: Sure. So this is 11 actually -- 12 MS. SCHWARTZ: It's a compilation 13 document. 14 MR. DAVIS: -- multiple documents, but 15 I can read them off. It's SF124902 through 03. 16 SF124906 through 07. 17 SF124910 through 11. 18 UNIDENTIFIED TELEPHONIC SPEAKER: Are 19 all three documents being marked as the same 20 exhibit? 21 MR. DAVIS: They are all stapled 22 together. It's a six-page exhibit.</p>	<p style="text-align: right;">360</p> <p>1 information in this litigation; correct? 2 <b>A Yes. But I'm not a legal counsel, and</b> 3 <b>I can't answer the specific question at hand.</b> 4 Q And I'm not asking you to, sir. You 5 understand, though, that you have an obligation 6 not to disclose what we're talking about here 7 today outside of this room or with people outside 8 of this litigation; is that correct? 9 <b>A Yes. Other than the knowledge I walked</b> 10 <b>in with, I won't speak of it.</b> 11 MR. KEALEY: Counsel, you need to 12 establish a reason to ask this witness to become 13 acquainted with this highly confidential 14 document. Are you -- 15 MS. SCHWARTZ: Sir, I will get there. 16 MR. KEALEY: Make me an offer of proof, 17 please. What is the engagement with this 18 document? 19 MS. SCHWARTZ: Sir, I have no burden to 20 make an offer of proof. 21 MR. KEALEY: Well, I'm asking as a 22 courtesy to me in order to keep this deposition</p>
<p style="text-align: right;">359</p> <p>1 MR. KEALEY: Note a preliminary 2 objection for the record. I'll ask you to 3 establish a foundation of personal knowledge or 4 engagement of this witness with this document. 5 If you're not able to do that, and you're going 6 to ask this witness to opine on some aspect of a 7 particular farming operation, you're asking for 8 an expert opinion of this witness. And he's not 9 here as an expert witness for that purpose, he's 10 here to testify about his historical 11 participation in events. I would ask you to 12 confine the questioning to that. 13 Q Sir, let me ask you a few questions 14 before we get to this document. This morning you 15 recall executing the protective order in the 16 Kansas litigation; correct? 17 <b>A Yes. I think I signed two different</b> 18 <b>protective orders.</b> 19 Q And you understand that with signing -- 20 I'll represent to you the protective 21 orders are very similar. You understand that you 22 may be reviewing very sensitive confidential</p>	<p style="text-align: right;">361</p> <p>1 on the track it should be on to tell me what your 2 reason is for asking this witness to look at this 3 document before he looks at it. I think that's 4 fair. 5 MS. SCHWARTZ: Sir, I'm not obligated 6 to give you a justification -- 7 MR. KEALEY: I don't want to argue with 8 you about Kansas rules. I'm asking you for 9 professional courtesy, counsel. 10 MS. SCHWARTZ: If you'll allow me to 11 ask the witness a few preliminary questions -- 12 MR. KEALEY: Without looking at the 13 document. Okay. Go ahead and turn it over and 14 ask your preliminary questions. 15 Q Sir, as the chair of the scientific 16 advisory committee, have you seen an audit 17 checklist before? 18 <b>A I am sure that we were shown the audit</b> 19 <b>checklist along the line, and I, frankly, relied</b> 20 <b>on other committee members to deal with the</b> 21 <b>questions about audit.</b> 22 Q But it's fair to say you've seen an</p>

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<p style="text-align: right;">362</p> <p>1 audit checklist before; correct?</p> <p>2 <b>A That's fair to say.</b></p> <p>3 Q And do you have an understanding that</p> <p>4 any company who wants to be UEP certified must go</p> <p>5 through an audit; correct?</p> <p>6 <b>A That's correct.</b></p> <p>7 Q And as part of the audit, do you have</p> <p>8 an understanding that an audit checklist is</p> <p>9 filled out for that company or that facility?</p> <p>10 <b>A I'm aware of some of the details, but I</b></p> <p>11 <b>couldn't tell you the details of an audit.</b></p> <p>12 <b>That's outside my expertise.</b></p> <p>13 Q Do you have an understanding that a</p> <p>14 company to be UEP certified does not need to have</p> <p>15 a perfect score on the audit?</p> <p>16 <b>A That was my understanding, yes.</b></p> <p>17 Q And do you have an understanding</p> <p>18 about -- today -- how many points total there are</p> <p>19 in an audit?</p> <p>20 <b>A No. I would speculate a hundred, but I</b></p> <p>21 <b>don't know. I don't recall. I'm sure I knew at</b></p> <p>22 <b>some point.</b></p>	<p style="text-align: right;">364</p> <p>1 passing score?</p> <p>2 MR. DAVIS: Objection. Lacks</p> <p>3 foundation.</p> <p>4 <b>A The document stands for itself.</b></p> <p>5 Q Is that consistent with your</p> <p>6 understanding of the audit?</p> <p>7 MR. DAVIS: Objection.</p> <p>8 <b>A My understanding of the audit is</b></p> <p>9 <b>that -- it that there were points, and so many</b></p> <p>10 <b>were required to pass. Beyond that, I don't have</b></p> <p>11 <b>a detailed knowledge of -- I'll not an expert in</b></p> <p>12 <b>audits. Some of the other committee members are</b></p> <p>13 <b>more versed in audits.</b></p> <p>14 Q And who would have been those committee</p> <p>15 members who would have had more knowledge about</p> <p>16 the audits?</p> <p>17 <b>A If you look at -- I think Janice --</b></p> <p>18 <b>Janice Swanson and Joy Mench both served on</b></p> <p>19 <b>Adele's program and helped her develop her</b></p> <p>20 <b>program which had an audit system. So I'm a</b></p> <p>21 <b>physiologist, and I was really the chair of the</b></p> <p>22 <b>committee. I'm not an ethologist, I'm not a</b></p>
<p style="text-align: right;">363</p> <p>1 Q If you can take -- I'm sorry -- in the</p> <p>2 stack in front of you what was previously marked</p> <p>3 today at Exhibit 9. This was the United Egg</p> <p>4 Producers Animal Husbandry Guidelines for U.S.</p> <p>5 Egg Laying Flocks, the 2008 edition.</p> <p>6 <b>A Yes, I have that document.</b></p> <p>7 Q Great. If you will turn to page 24.</p> <p>8 <b>A Yes.</b></p> <p>9 Q And do you see the heading on the</p> <p>10 left-hand side that says Audit?</p> <p>11 <b>A I do.</b></p> <p>12 Q You recall that we looked at this</p> <p>13 document earlier today; correct?</p> <p>14 <b>A Yes, I scanned it.</b></p> <p>15 Q And do you see the second paragraph</p> <p>16 under that, that it says "Audits require 170</p> <p>17 points of a 200 total for a passing score." Do</p> <p>18 you see that?</p> <p>19 <b>A I do.</b></p> <p>20 Q And do you have an understanding that</p> <p>21 for an egg producer, all they need to get for the</p> <p>22 audit is 170 points out of the 200 total for a</p>	<p style="text-align: right;">365</p> <p>1 <b>behaviorist.</b></p> <p>2 Q Did you have an understanding that</p> <p>3 companies that were UEP certified could fail</p> <p>4 aspects of the audit but still remain UEP</p> <p>5 certified?</p> <p>6 MR. DAVIS: Objection.</p> <p>7 <b>A I was aware that there were some things</b></p> <p>8 <b>that were "yes" or "no" and some aspects were</b></p> <p>9 <b>given points, which is normal for audits.</b></p> <p>10 Q And you understood that because you</p> <p>11 didn't have to get a perfect score, that there</p> <p>12 were parts of the audits where you could miss</p> <p>13 points and still pass; correct?</p> <p>14 <b>A That's correct. Then it's also in the</b></p> <p>15 <b>context of implementing guidelines and phasing in</b></p> <p>16 <b>guidelines. So you're asking very precise</b></p> <p>17 <b>questions about something that was quite nuanced</b></p> <p>18 <b>and bumpy along the road.</b></p> <p>19 Q Sir, do you have an understanding as to</p> <p>20 whether a company could get a -- could get a zero</p> <p>21 out of the total possible points for the</p> <p>22 question: "Is feed and water kept so that it</p>



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<p style="text-align: right;">366</p> <p>1 remains in a fresh condition?" and still pass the</p> <p>2 audit?</p> <p>3 <b>A I don't recall.</b></p> <p>4 <b>Q</b> Do you recall whether a company could</p> <p>5 get a zero on the category: Seeking compliance</p> <p>6 with the daily removal of those layers that are</p> <p>7 dead or injured, euthanized and depopulated in a</p> <p>8 humane manner, and still be UEP certified?</p> <p>9 <b>A I do not recall. As I said earlier, I</b></p> <p>10 <b>relied on other committee members to look at this</b></p> <p>11 <b>area, evaluate reports, and that was my mode of</b></p> <p>12 <b>operation. I was not a detail person. I was the</b></p> <p>13 <b>committee chair, so I cannot answer those</b></p> <p>14 <b>questions. I do not recall the discussions.</b></p> <p>15 <b>Q</b> So sitting here today you do not know</p> <p>16 whether any UEP certified company has provided</p> <p>17 fresh water to all of its hens?</p> <p>18 <b>MR. KEALEY:</b> Object to the form of the</p> <p>19 question. That's an incoherent question,</p> <p>20 counsel.</p> <p>21 <b>MR. DAVIS:</b> Objection to form.</p> <p>22 <b>MR. KEALEY:</b> Any company in the history</p>	<p style="text-align: right;">368</p> <p>1 Argumentative. Asked and answered.</p> <p>2 <b>A It was not my role then, nor is it</b></p> <p>3 <b>today my role to know that.</b></p> <p>4 <b>Q</b> And is there somewhere public that I</p> <p>5 could go to find out whether a specific company</p> <p>6 had passed all of the aspects of the UEP</p> <p>7 certified audit checklist?</p> <p>8 <b>MR. DAVIS:</b> Objection. Lacks</p> <p>9 foundation.</p> <p>10 <b>A I have no basis to answer that</b></p> <p>11 <b>question.</b></p> <p>12 <b>MR. DAVIS:</b> Counsel, are we leaving</p> <p>13 Exhibit 36 as part of the record?</p> <p>14 <b>Q</b> Sir, I'll ask again. Sitting here</p> <p>15 talking to you today, I understand that you are</p> <p>16 not the expert on an audit checklist; is that</p> <p>17 fair to say?</p> <p>18 <b>A That's correct. I don't recall the</b></p> <p>19 <b>details of the audit checklist, nor have I ever</b></p> <p>20 <b>been a person that, from an expert or</b></p> <p>21 <b>professional perspective, was involved with</b></p> <p>22 <b>audits and audit development.</b></p>
<p style="text-align: right;">367</p> <p>1 of companies has ever not -- any company in the</p> <p>2 history of that set, whatever its population is,</p> <p>3 has not done something or has done something? I</p> <p>4 just don't understand the question.</p> <p>5 <b>Q</b> Sitting here today, you do not know</p> <p>6 whether any company that publicly said they're</p> <p>7 UEP certified provided fresh water to their hens,</p> <p>8 for instance?</p> <p>9 <b>MR. DAVIS:</b> Objection to form.</p> <p>10 <b>A You're asking me about something that</b></p> <p>11 <b>happens on an individual farm during an</b></p> <p>12 <b>individual audit, and I am not aware of that.</b></p> <p>13 <b>What I can tell you is the intent and the spirit</b></p> <p>14 <b>and the content of our science-based guidelines</b></p> <p>15 <b>that have been implemented and are moving</b></p> <p>16 <b>forward.</b></p> <p>17 <b>Q</b> But sitting here today, sir, with</p> <p>18 regard to the recommendations that the scientific</p> <p>19 advisory committee made, you don't know whether</p> <p>20 any of the UEP certified companies did or did not</p> <p>21 follow any of those specific guidelines?</p> <p>22 <b>MR. DAVIS:</b> Objection to form.</p>	<p style="text-align: right;">369</p> <p>1 <b>Q</b> Sir, you can put this document away. I</p> <p>2 will not show you this document.</p> <p>3 <b>THE REPORTER:</b> Do I get it?</p> <p>4 <b>MR. KEALEY:</b> I guess so, because she</p> <p>5 marked it.</p> <p>6 <b>Q</b> Sir, I think you had testified earlier</p> <p>7 today that you would have been disappointed to</p> <p>8 hear that members who participated in the UEP</p> <p>9 guidelines had ulterior motives that involved</p> <p>10 supply and demand issues.</p> <p>11 <b>MR. DAVIS:</b> Objection.</p> <p>12 <b>MR. KEALEY:</b> I don't recall.</p> <p>13 <b>A I don't recall saying that.</b></p> <p>14 <b>Q</b> Is it fair to say that you would be</p> <p>15 disappointed to hear that UEP members who</p> <p>16 participated in creating the guidelines --</p> <p>17 <b>A I think what I said was that our</b></p> <p>18 <b>committee members would be disappointed if there</b></p> <p>19 <b>were any other reasons for the scientific</b></p> <p>20 <b>guidelines. We worked very hard and based our</b></p> <p>21 <b>guidelines on science. I can't remember my exact</b></p> <p>22 <b>comment, but it was something to that effect</b></p>



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<p style="text-align: right;">370</p> <p>1 <b>because of the professional pride and</b>  2 <b>professional -- and the nature of the committee</b>  3 <b>members.</b>  4 Q And did that pride also extend to the  5 UEP producer committee as well?  6 MR. DAVIS: Objection. Lacks  7 foundation.  8 <b>A I don't understand what you're talking</b>  9 <b>about.</b>  10 Q You were a consultant for the UEP  11 produce producer committee as well; correct?  12 <b>A I was -- as my role as the chair of the</b>  13 <b>scientific advisory committee, I was the liaison</b>  14 <b>to the producer scientific committee. They</b>  15 <b>sometimes called me a consultant, but it wasn't</b>  16 <b>in my consulting role that I interacted with that</b>  17 <b>committee.</b>  18 Q And was Paul Bahan the chair of the UEP  19 producer committee at a point in time?  20 <b>A I believe so.</b>  21 Q And do you recall whether he was the  22 chair in 2001?</p>	<p style="text-align: right;">372</p> <p>1 MR. KEALEY: Counsel, I just asked you  2 not to pursue the question that way. If you have  3 evidence that this person said something, then  4 you need to establish that before you pursue the  5 next question.  6 Q You can answer my question, sir.  7 MR. DAVIS: Objection to form.  8 <b>A I have no basis to comment on his</b>  9 <b>opinion.</b>  10 Q Would it surprise you that he would  11 have said that?  12 MR. KEALEY: Same objection.  13 MR. DAVIS: Same objection.  14 <b>A I cannot recall. I have no opinion.</b>  15 Q A few last questions before we move on  16 to a new topic as it relates back to the  17 scientific advisory committee members. We had  18 talked earlier today about Don Bell; correct?  19 <b>A Don was a member of the committee</b>  20 <b>before his retirement. That is correct.</b>  21 Q And he was one of the original members  22 of the scientific advisory committee; correct?</p>
<p style="text-align: right;">371</p> <p>1 <b>A I do not. I could not give you the</b>  2 <b>chronological order.</b>  3 Q And would you be disappointed to hear  4 that he thought the animal welfare program and  5 the recommendations could be a justification for  6 flock reductions?  7 MR. KEALEY: Wait a minute. That's not  8 a proper form of the question. If you're saying  9 that some person said that, you need to establish  10 a foundation before you ask the witness to  11 comment on something that may or may not have  12 occurred. You haven't established those facts  13 for him to address.  14 Q Dr. Armstrong, did you ever have a  15 conversation with Paul Bahan about the animal  16 welfare UEP guidelines being a possible  17 justification for a flock reduction without  18 raising legal issues?  19 MR. DAVIS: Objection.  20 <b>A Not that I recall.</b>  21 Q Would you be disappointed to learn that  22 he had said that?</p>	<p style="text-align: right;">373</p> <p>1 <b>A Yes.</b>  2 Q And was he also a consultant for UEP?  3 MR. DAVIS: Objection. Lacks  4 foundation.  5 <b>A I -- I don't know. I assume so. I</b>  6 <b>have no direct knowledge of Don Bell's</b>  7 <b>consultantship or lack thereof. But I'd always</b>  8 <b>assumed so.</b>  9 Q Did you have any understanding as to  10 whether Mr. Bell was paid by UEP?  11 <b>A I had no knowledge either way.</b>  12 Q Did you ask any of the members of the  13 scientific advisory committee as to whether they  14 were being compensated by UEP in any way?  15 <b>A I had no reason to. I did not.</b>  16 Q Sir, you've published in peer-reviewed  17 academic journals; correct?  18 <b>A Yes.</b>  19 Q And if your research was in any way  20 funded by a company, is that something you would  21 normally disclose in a footnote, for example, in  22 a paper that's published?</p>

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<p style="text-align: right;">374</p> <p>1 <b>A That's common practice.</b></p> <p>2 Q And why is that common practice?</p> <p>3 <b>A Just disclosure.</b></p> <p>4 Q And --</p> <p>5 <b>A It's typically -- it's a common</b></p> <p>6 <b>practice because it's part of the specific</b></p> <p>7 <b>university guidelines.</b></p> <p>8 Q And have those guidelines been at every</p> <p>9 university you have been at?</p> <p>10 <b>A As far as I know.</b></p> <p>11 Q And would part of the reason for</p> <p>12 disclosing that -- let me start over.</p> <p>13 Why would you, in addition to it being</p> <p>14 a university guideline, disclose that in a</p> <p>15 published article?</p> <p>16 MR. DAVIS: Objection.</p> <p>17 <b>A I've already answered that question.</b></p> <p>18 <b>Because it's part of the university guidelines.</b></p> <p>19 Q And do you have an understanding as to</p> <p>20 why that's part of university guidelines?</p> <p>21 MR. DAVIS: Objection. Vague and</p> <p>22 ambiguous.</p>	<p style="text-align: right;">376</p> <p>1 <b>If you have other questions, I'm happy</b></p> <p>2 <b>to answer them.</b></p> <p>3 Q And your answer is that you would put a</p> <p>4 foot note in that circumstance to disclose --</p> <p>5 <b>A If the research --</b></p> <p>6 MR. DAVIS: Objection --</p> <p>7 THE REPORTER: Excuse me. Hold on.</p> <p>8 Please wait --</p> <p>9 THE WITNESS: You've asked me three</p> <p>10 questions --</p> <p>11 MR. DAVIS: Let me just voice the</p> <p>12 objection --</p> <p>13 (Off the record discussion.)</p> <p>14 Q Just to be clear on your testimony, if</p> <p>15 you received funding for research and you</p> <p>16 published an article on that research, you would</p> <p>17 typically drop a footnote disclosing that</p> <p>18 funding; correct?</p> <p>19 <b>A That is correct. And, if an individual</b></p> <p>20 <b>from a university receives a consulting fee,</b></p> <p>21 <b>there are appropriate documents that the</b></p> <p>22 <b>individual files internal to the university, and</b></p>
<p style="text-align: right;">375</p> <p>1 <b>A It is a normal process of publication.</b></p> <p>2 Q And it would be to disclose any</p> <p>3 potential bias that could be alleged against the</p> <p>4 publication for example; correct?</p> <p>5 <b>A That's correct.</b></p> <p>6 Q And again, that's something you would</p> <p>7 routinely do if part of your research was funded,</p> <p>8 would be to drop a footnote disclosing that there</p> <p>9 had been funding provided for research?</p> <p>10 <b>A For research that is funded, that is</b></p> <p>11 <b>correct. That does not -- that's not the same</b></p> <p>12 <b>for other categories.</b></p> <p>13 Q But if you had been paid to help do</p> <p>14 that research, that's something that you would</p> <p>15 put into a footnote in a published article?</p> <p>16 MR. KEALEY: Asked and answered,</p> <p>17 counsel. You've asked this three times.</p> <p>18 <b>A You just -- you just talked about an</b></p> <p>19 <b>individual being paid; that's a consulting</b></p> <p>20 <b>agreement. What you mentioned earlier, did the</b></p> <p>21 <b>company fund the research that was published in</b></p> <p>22 <b>an article, and that's what I answered.</b></p>	<p style="text-align: right;">377</p> <p>1 <b>that is not the same category. I just wanted to</b></p> <p>2 <b>make that clear.</b></p> <p>3 Q Would you -- have you personally</p> <p>4 disclosed being a consultant in an article you</p> <p>5 published?</p> <p>6 MR. KEALEY: Objection. Lack of</p> <p>7 foundation.</p> <p>8 <b>A No. And that's not typical. That's</b></p> <p>9 <b>not typical practice because I was publishing</b></p> <p>10 <b>those articles as Michigan State University and</b></p> <p>11 <b>as a -- as chair of the scientific committee.</b></p> <p>12 Q Sir, at the time the scientific</p> <p>13 advisory committee was formed, I think, was</p> <p>14 McDonald's doing their own animal welfare</p> <p>15 research?</p> <p>16 <b>A I don't recall the exact details, but</b></p> <p>17 <b>when you state the question: "Was McDonald's</b></p> <p>18 <b>doing their own research?" I define that as</b></p> <p>19 <b>paying for studies, and the answer is no.</b></p> <p>20 Q Were they in the process of developing</p> <p>21 animal welfare guidelines for the eggs they</p> <p>22 purchased?</p>

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<p style="text-align: right;">378</p> <p>1       <b>A Yes. I and other committee members</b>  2       <b>were also members of the McDonald's welfare</b>  3       <b>committee, and McDonald's was discussing many</b>  4       <b>aspects of animal welfare and social</b>  5       <b>responsibility.</b>  6       Q And if you could help me understand  7       what the differences were between -- well, let me  8       start over.  9       Some of the differences between the UEP  10       certified program and the McDonald's  11       recommendations in the 2000-2001 time period, I  12       want to ask you a few questions about those.  13       If you could explain what some of those  14       differences were at that time frame?  15       <b>A The two main differences that I recall</b>  16       <b>off the top of my head --</b>  17       First let me mention the context. The  18       science by which both sets of guidelines were  19       developed was the same. The implementation is  20       what differed. So the big different -- two big  21       differences -- which is not inclusive because I  22       don't have documents in front of me -- but the</p>	<p style="text-align: right;">380</p> <p>1       that McDonald's was requiring of their suppliers;  2       correct?  3       MR. DAVIS: Objection.  4       <b>A UEP adopted their guidelines first</b>  5       <b>based on the scientific advice of our committee;</b>  6       <b>and there was significant overlap in the two</b>  7       <b>committees, so the same advice was given. There</b>  8       <b>was a different implementation. And our</b>  9       <b>scientific committee did not worry whether it was</b>  10       <b>67 or 72; we were happy to see progress.</b>  11       It's a matter of a voluntary  12       organization that contains most of the industry,  13       versus McDonald's which at that time had about 26  14       shell egg providers. I think if you ask the  15       committee members then and you ask them today,  16       they would say that both programs provided humane  17       treatment of laying hens. But there were  18       certainly differences in implementation.  19       Q And McDonald's did not have a house  20       average concept; correct? To the best of your  21       knowledge.  22       <b>A I do not recall the details of</b></p>
<p style="text-align: right;">379</p> <p>1       two big differences is McDonald's and in UEP --  2       because there was a lot of crosstalk going on  3       because of common members, and I also talked  4       with -- through my role as being on both,  5       members, as an example.  6       One, McDonald's did not look at  7       anything related to a molt. They moved on a date  8       certain in the future that their birds would not  9       be molted.  10       Second, McDonald's did not use a range;  11       in effect, they used 72. The reason that  12       McDonald's used 72 is that's because that's what  13       we stated at the time. They took a snapshot of  14       the science-based guidelines.  15       Q So at the time -- to simplify that, the  16       two main differences you remember related to  17       molting and to the cage space; correct?  18       <b>A That's correct.</b>  19       Q And is -- to the best of your  20       knowledge, is McDonald's -- let me strike that  21       and start over.  22       UEP could have adopted those guidelines</p>	<p style="text-align: right;">381</p> <p>1       <b>McDonald's' program at that level.</b>  2       Q Do you recall any conversations with  3       Mr. Gregory about trying to convince McDonald's  4       to change their recommendations?  5       <b>A I don't recall the details, but I do</b>  6       <b>recall conversations about that. Again, I don't</b>  7       <b>recall the details, but I do believe we had that</b>  8       <b>discussion.</b>  9       Q And do you believe that Mr. Gregory  10       would have approached McDonald's about changing  11       their guidelines?  12       MR. DAVIS: Objection.  13       <b>A I can't answer that question. All I</b>  14       <b>know is that serving on both committees, in an</b>  15       <b>ideal world we would all love to have seen a</b>  16       <b>similar guideline as far as implementation, but</b>  17       <b>that didn't occur. And then later, Burger King</b>  18       <b>came out with 78 square inches.</b>  19       <b>Were all three science-based</b>  20       <b>guidelines? Yes.</b>  21       Q Sir, the final -- the September 2000  22       recommendations from the scientific advisory</p>

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<p style="text-align: right;">382</p> <p>1 committee, do you recall whether those were 2 publicly available back in that time period?</p> <p>3 <b>A No one has presented today a document</b> 4 <b>that I haven't looked at at some time that was</b> 5 <b>a -- where the guidelines were published in</b> 6 <b>Feedstuffs. I don't recall the date of that.</b> 7 <b>And I cannot recall whether they were published</b> 8 <b>publicly before that.</b></p> <p>9 <b>But the Feedstuffs article that</b> 10 <b>published the entire set of guidelines with the</b> 11 <b>literature review, recommendation, and guidelines</b> 12 <b>was something that I pushed because I wanted to</b> 13 <b>get it in the record to make sure that everyone</b> 14 <b>that read Feedstuffs understood it. And we also</b> 15 <b>wanted to try to influence the rest of animal</b> 16 <b>agriculture.</b></p> <p>17 <b>Q Do you recall asking Mr. Gregory to</b> 18 <b>provide the scientific committee report to a</b> 19 <b>person outside of the committee and being told</b> 20 <b>no?</b></p> <p>21 <b>A I -- I don't recall.</b> 22 <b>(Deposition Exhibit was marked for</b></p>	<p style="text-align: right;">384</p> <p>1 Feedstuffs?</p> <p>2 <b>A We'd have to look at the dates, and I</b> 3 <b>could tell you. But I will tell you that the</b> 4 <b>major aspects of our recommendations did not</b> 5 <b>change drastically from a macro perspective as we</b> 6 <b>moved along.</b></p> <p>7 <b>Q But in 2001, the date of your</b> 8 <b>February 21st, 2001, email, it appears that the</b> 9 <b>scientific report was not available; is that fair</b> 10 <b>to say based on this email?</b></p> <p>11 <b>A No. It's fair to say that Gene didn't</b> 12 <b>want to give it to Karen Davis. That is --</b> 13 <b>extending that to the rest of the world is</b> 14 <b>something that I cannot answer.</b></p> <p>15 <b>Q But if it had been -- did you have an</b> 16 <b>understanding that it was publicly available in</b> 17 <b>2001?</b></p> <p>18 <b>A I don't recall having that discussion.</b> 19 <b>All I can tell you is that my goal was to make it</b> 20 <b>publicly available as soon as possible. I can't</b> 21 <b>tell you what went on beyond this. But this --</b> 22 <b>this, to link this individual with the rest of</b></p>
<p style="text-align: right;">383</p> <p>1 identification.)</p> <p>2 <b>Q Marking as Exhibit 37 a document with</b> 3 <b>the Bates label UE0840917.</b></p> <p>4 <b>A I see the email exchange.</b></p> <p>5 <b>Q And who is Karen Davis?</b></p> <p>6 <b>A Karen Davis is -- I don't recall the</b> 7 <b>exact name of her group, but she's an animal</b> 8 <b>activist, someone that does not want to see</b> 9 <b>laying hens used at all by humans. And her</b> 10 <b>organization had been bombarding the UEP for many</b> 11 <b>years.</b></p> <p>12 <b>So the document stands for itself. I</b> 13 <b>cannot tell you. I don't recall what I said to</b> 14 <b>Gene after he made this comment. But I can tell</b> 15 <b>you from the longer perspective, I worked very</b> 16 <b>hard, and we had that published in Feedstuffs.</b> 17 <b>And I was successful in getting that done because</b> 18 <b>I believed in the long haul that was important to</b> 19 <b>do. I can't recall whether he ended up sending</b> 20 <b>this to her or not. I don't recall.</b></p> <p>21 <b>Q Do you recall which version that we've</b> 22 <b>looked at today ultimately was published in</b></p>	<p style="text-align: right;">385</p> <p>1 <b>the world is a stretch because there's some</b> 2 <b>serious emotion there.</b></p> <p>3 <b>MR. KEALEY: This is notice to all</b> 4 <b>counsel. We're a little bit past six and a half</b> 5 <b>hours on the record, so I'd ask you to update me</b> 6 <b>on your status and on your position about how</b> 7 <b>we're going to wrap up this deposition promptly.</b></p> <p>8 <b>MR. OLSON: Could I make a suggestion?</b></p> <p>9 <b>MR. KEALEY: Yes.</b></p> <p>10 <b>MR. OLSON: We break for two to five</b> 11 <b>minutes, and we can confer and figure out the</b> 12 <b>most efficient way to wrap up?</b></p> <p>13 <b>MR. KEALEY: Excellent idea.</b></p> <p>14 <b>THE WITNESS: Outstanding.</b></p> <p>15 <b>THE VIDEOGRAPHER: We're going off the</b> 16 <b>record. The time is 4:52 p.m.</b> 17 <b>(A recess was taken.)</b></p> <p>18 <b>THE VIDEOGRAPHER: This is the</b> 19 <b>beginning of Tape 7. The time is 5:03 p.m., and</b> 20 <b>we are back on the record.</b></p> <p>21 <b>MS. SCHWARTZ: We have one housekeeping</b> 22 <b>thing. Exhibit 36 is being withdrawn. Exhibit</b></p>

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<p style="text-align: right;">386</p> <p>1 36.</p> <p>2 Q Dr. Armstrong, I just have a few last</p> <p>3 questions for you today. Did you ever request</p> <p>4 that UEP make a donation to your discretionary</p> <p>5 account at Michigan State?</p> <p>6 A Yes.</p> <p>7 Q And was that request in the nature of</p> <p>8 approximately \$18,000 per year?</p> <p>9 A I don't recall the amount. It wasn't</p> <p>10 the same, and I think it happened two or three</p> <p>11 times. I don't recall the exact amounts.</p> <p>12 Q And did UEP make that donation to your</p> <p>13 discretionary account?</p> <p>14 A They did.</p> <p>15 Q And to the best of your knowledge</p> <p>16 sitting here today it was two or three times?</p> <p>17 A The best of my -- the best of my</p> <p>18 recollection.</p> <p>19 Q And sitting here today do you have --</p> <p>20 for those two or three times do you remember the</p> <p>21 amounts?</p> <p>22 A I do not recall the individual amounts.</p>	<p style="text-align: right;">388</p> <p>1 Thank you, Dr. Armstrong. And I know</p> <p>2 it's late in the day, and I'll try to be brief.</p> <p>3 FURTHER CROSS-EXAMINATION,</p> <p>4 QUESTIONS BY DOUGLAS H. PATTON:</p> <p>5 Q Since your retirement or resignation</p> <p>6 from the UEP scientific committee, do you make an</p> <p>7 effort to keep abreast of developments in the</p> <p>8 industry regarding animal welfare?</p> <p>9 A Mr. Patton, would you remind me who</p> <p>10 you're with?</p> <p>11 Q Sure. And who's that speaking?</p> <p>12 A That's Jeff Armstrong.</p> <p>13 Q Oh, okay. I'm an attorney with the</p> <p>14 firm of Kenny Nachwalter, and I represent the</p> <p>15 Kroger plaintiffs in this case.</p> <p>16 A Okay. Thank you.</p> <p>17 And the question was? I'm sorry.</p> <p>18 Q Since your resignation from the UEP</p> <p>19 scientific committee, do you make an effort or at</p> <p>20 least try to stay abreast of developments that</p> <p>21 occur with respect to animal welfare in the egg</p> <p>22 industry?</p>
<p style="text-align: right;">387</p> <p>1 Q Did you ever discuss with Mr. Gregory a</p> <p>2 way to be compensated without becoming an</p> <p>3 employee of UEP, for example?</p> <p>4 MR. DAVIS: Objection.</p> <p>5 A I only discussed the invoices that were</p> <p>6 presented earlier, and I never had a discussion</p> <p>7 about being an employee because I've been an</p> <p>8 employee at Purdue, I was an employee at Michigan</p> <p>9 State, and an employee now. Consulting is a</p> <p>10 normal practice for university employees and is</p> <p>11 encouraged.</p> <p>12 Q Did you have a conversation with</p> <p>13 Mr. Gregory about how to be compensated without</p> <p>14 forming a contract with UEP?</p> <p>15 A I don't recall.</p> <p>16 MS. SCHWARTZ: I've got no further</p> <p>17 questions.</p> <p>18 MR. OLSON: So, I guess, Doug Patton,</p> <p>19 if you're going to ask questions, it's probably</p> <p>20 your turn.</p> <p>21 MR. PATTON: Sure. Let me ask a few</p> <p>22 questions.</p>	<p style="text-align: right;">389</p> <p>1 A Only to the extent of what I can read</p> <p>2 in Feedstuffs, and also I still get United Voices</p> <p>3 on a regular basis, and I scan that document.</p> <p>4 Q What knowledge do you have of an ABC</p> <p>5 undercover investigation broadcast nationally in</p> <p>6 November of 2011 exposing Sparboe Farms for</p> <p>7 inhumanely treating hens?</p> <p>8 MR. DAVIS: Objection to form.</p> <p>9 A I -- there have been numerous</p> <p>10 undercover investigations, so I don't recall the</p> <p>11 specifics.</p> <p>12 Q Do you recall at all a broadcast on ABC</p> <p>13 where, I guess, Mercy for Animals folks went into</p> <p>14 a Sparboe Farms henhouse and videoed treatment of</p> <p>15 hens?</p> <p>16 A I remember -- I don't remember the</p> <p>17 details, but I remember hearing about -- I</p> <p>18 can't -- I can't pinpoint the details.</p> <p>19 Q Well, I'll be brief. In your view,</p> <p>20 Doctor, would swinging a hen around on a rope be</p> <p>21 humane treatment of a hen?</p> <p>22 MR. DAVIS: Objection.</p>



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<p style="text-align: right;">390</p> <p>1       <b>A</b> I really would need to see the video</p> <p>2       and I'm -- I'm not quite understanding the</p> <p>3       context, but we have science-based guidelines.</p> <p>4       <b>And humane handling of a hen means grabbing the</b></p> <p>5       <b>bird's legs with one hand and cradling the bird</b></p> <p>6       <b>in your other hand. So other than that, I would</b></p> <p>7       <b>ask our behavior experts to determine if that</b></p> <p>8       <b>instance was inhumane or not.</b></p> <p>9       Q Well, part of the broadcast showed a</p> <p>10      hen with like what looked like a rope tied around</p> <p>11      it and a handler swinging it around over his head</p> <p>12      like a lasso. Would that be humane in your mind?</p> <p>13      MR. DAVIS: Objection. Argumentative,</p> <p>14      lacks foundation.</p> <p>15      <b>A</b> I -- as far as what you're picturing --</p> <p>16      and I don't recall the video -- you're picturing</p> <p>17      a bird with -- it really wouldn't matter to me if</p> <p>18      its legs were tied or it's tied around its neck</p> <p>19      and it's being swung around by a person, I would</p> <p>20      call that abuse.</p> <p>21      Q Now, if dead hens are left in a cage</p> <p>22      for days, would you consider that humane?</p>	<p style="text-align: right;">392</p> <p>1       Q If you could, on page 1 where it says</p> <p>2       Review of Guidelines, the minutes read that the</p> <p>3       committee reviewed the draft of a "Humane</p> <p>4       Guidelines for U.S. Egg Laying Flocks." Do you</p> <p>5       see that?</p> <p>6       <b>A</b> Yes.</p> <p>7       Q Now, I believe that you were asked</p> <p>8       whether or not this statement refers to the</p> <p>9       document that's been marked as Exhibit 18. If</p> <p>10      you could refer to that document.</p> <p>11      <b>A</b> Yes, I see the document. 18.</p> <p>12      Q And Exhibit 18, you'll see this is</p> <p>13      dated May of 2000.</p> <p>14      <b>A</b> Yes.</p> <p>15      Q And these are -- Exhibit 18, again, are</p> <p>16      a draft of recommendations by UEP's scientific</p> <p>17      advisory committee; is that right?</p> <p>18      <b>A</b> That's correct.</p> <p>19      Q Is this document entitled Humane</p> <p>20      Guidelines for U.S. Egg Laying Flocks?</p> <p>21      MR. SCHIRMER: Object to form.</p> <p>22      <b>A</b> I think it is.</p>
<p style="text-align: right;">391</p> <p>1       MR. DAVIS: Objection.</p> <p>2       <b>A</b> I would consider dead hens being left</p> <p>3       in the cage as a very bad management practice</p> <p>4       that needs to be dealt with.</p> <p>5       MR. PATTON: Okay. I have no further</p> <p>6       questions. Thank you.</p> <p>7       MR. DAVIS: Anyone else on the phone?</p> <p>8       Okay. Seeing as though there are no</p> <p>9       more questions, I will do what I anticipate to be</p> <p>10      a very short redirect of hopefully ten to fifteen</p> <p>11      minutes tops.</p> <p>12      REDIRECT EXAMINATION,</p> <p>13      QUESTIONS BY EVAN W. DAVIS:</p> <p>14      Q Dr. Armstrong, if you could refer back</p> <p>15      to the document that's marked as Exhibit 19.</p> <p>16      Exhibit 19 are a set of minutes from</p> <p>17      the UEP Producer Committee for Animal Welfare</p> <p>18      dated May 15th, 2000.</p> <p>19      <b>A</b> Okay.</p> <p>20      Q Do you recall being asked questions by</p> <p>21      plaintiffs' counsel about this document?</p> <p>22      <b>A</b> Yes.</p>	<p style="text-align: right;">393</p> <p>1       Q Exhibit 18's title. At the top --</p> <p>2       <b>A</b> What you're asking is -- they reviewed</p> <p>3       a draft of the guidelines, and it was in May. I</p> <p>4       do not know exactly which document that's</p> <p>5       referring to. I'm confused now.</p> <p>6       Q So it may or may not be Exhibit 18, in</p> <p>7       your view?</p> <p>8       MS. SCHWARTZ: Object to form.</p> <p>9       <b>A</b> Yes.</p> <p>10      Q If you could turn to Exhibit 21.</p> <p>11      <b>A</b> Okay.</p> <p>12      Q And Exhibit 21 is a document entitled</p> <p>13      Animal Husbandry Guidelines for U.S. Egg Laying</p> <p>14      Flocks; do you see that?</p> <p>15      <b>A</b> Yes.</p> <p>16      Q And it's dated sometime in 2000;</p> <p>17      correct?</p> <p>18      <b>A</b> Yes.</p> <p>19      Q Do you know whether the reference in</p> <p>20      Exhibit 19 to humane guidelines for U.S.</p> <p>21      egg-laying flocks is referring to the document</p> <p>22      that's been marked as Exhibit 21?</p>



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<p style="text-align: right;">394</p> <p>1 MS. SCHWARTZ: Objection. Form, calls 2 for speculation.</p> <p>3 <b>A I do not know the timing, but if you</b> 4 <b>look at the letter of November 13th, this</b> 5 <b>document has a letter on the inside dated</b> 6 <b>November 13th, 2000, and these minutes were</b> 7 <b>May 15th, 2000. So it doesn't seem likely that</b> 8 <b>this is the document being referenced here.</b></p> <p>9 Q Might the minutes be referring to an 10 earlier draft of the document that's been labeled 11 as Exhibit 21?</p> <p>12 MS. SCHWARTZ: Objection. Form.</p> <p>13 <b>A That's entirely possible. It may have</b> 14 <b>been; I am not certain the document that is</b> 15 <b>referenced in Exhibit 19.</b></p> <p>16 Q So just to clarify, the document that's 17 referenced in Exhibit 19, you're not sure whether 18 or not that refers to the scientific advisory 19 committee's recommendations, or a draft thereof, 20 or whether it refers to the UEP producer 21 committee's animal husbandry guidelines, or a 22 draft thereof?</p>	<p style="text-align: right;">396</p> <p>1 <b>don't know for sure.</b></p> <p>2 Q You can put that aside. 3 (Deposition Exhibit 38 was marked for 4 identification.)</p> <p>5 Q Dr. Armstrong, I'll hand you what's 6 been marked as Exhibit 38. Do you recognize 7 Exhibit 38?</p> <p>8 <b>A Yes.</b></p> <p>9 Q What is Exhibit 38?</p> <p>10 <b>A It's another -- it's a 2002 edition of</b> 11 <b>the United Egg Producers Animal Husbandry</b> 12 <b>Guidelines for U.S. Egg Laying Flocks. It's a</b> 13 <b>document that resulted from the producer</b> 14 <b>committee.</b></p> <p>15 Q Exhibit 38 bears Bates label UE0295925. 16 If you will, turn to page 8 of the document.</p> <p>17 <b>A Yes.</b></p> <p>18 Q Under Molting Recommendations.</p> <p>19 <b>A Yes.</b></p> <p>20 Q The next-to-last paragraph says 21 "However, until such time that these alternatives 22 are available, the shortest period of feed</p>
<p style="text-align: right;">395</p> <p>1 MS. SCHWARTZ: Objection. Form. 2 Misstates previous testimony.</p> <p>3 <b>A I don't remember what I said earlier</b> 4 <b>this morning, but if you look at these minutes</b> 5 <b>and you look at the motion, it was moved and</b> 6 <b>seconded to accept the recommendations and goals</b> 7 <b>of the scientific committee with the</b> 8 <b>implementation plans of phasing in the cage space</b> 9 <b>allowance to be presented for approval at the</b> 10 <b>October board meeting, and that carried.</b></p> <p>11 <b>Based on that, regardless of the</b> 12 <b>document, they were voting on the scientific</b> 13 <b>guidelines. That's my belief that the motion --</b> 14 <b>and I was at the meeting, and time line wise,</b> 15 <b>that would have been about the time when they --</b> 16 <b>when this committee recommended to accept the</b> 17 <b>science-based guidelines and would have sent it</b> 18 <b>to the UEP committee.</b></p> <p>19 Q But do you know which document this 20 statement on page 1 is referring to?</p> <p>21 <b>A I don't know for sure, but I would say</b> 22 <b>it's more likely that one (indicating). But I</b></p>	<p style="text-align: right;">397</p> <p>1 withdrawal possible should be used to accomplish 2 the goal of rejuvenating the hen's egg production 3 capabilities and overall welfare." Do you see 4 that statement?</p> <p>5 Yes.</p> <p>6 Q Is that component of the guidelines 7 consistent with the scientific advisory 8 committee's recommendation?</p> <p>9 Yes.</p> <p>10 MS. SCHWARTZ: Objection. Form.</p> <p>11 <b>A Yes.</b></p> <p>12 Q Turn to page 12 of the document.</p> <p>13 <b>A Yes.</b></p> <p>14 Q Page 12 refers to the space allowance 15 per hen; is that correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And the time period for implementing 18 that?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And by April 1st, 2008, these 21 guidelines call for 67 inches of space to be 22 provided for white leghorn hens; is that correct?</p>

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<p style="text-align: right;">398</p> <p>1 MS. SCHWARTZ: Objection. Form.</p> <p>2 <b>A Yes.</b></p> <p>3 Q And how much space is called for to be</p> <p>4 provided to brown egg-laying hens?</p> <p>5 <b>A 76.</b></p> <p>6 Q And are those separate space</p> <p>7 requirements consistent with the scientific</p> <p>8 advisory committee's recommendations?</p> <p>9 MS. SCHWARTZ: Objection. Form.</p> <p>10 <b>A Yes. Yes.</b></p> <p>11 Q Put that document aside.</p> <p>12 Turn to the 2008 guidelines. I'm not</p> <p>13 sure which exhibit number they received.</p> <p>14 MR. KEALEY: Exhibit 9.</p> <p>15 Q Exhibit 9.</p> <p>16 <b>A Exhibit 9. Okay. I have it.</b></p> <p>17 Q Exhibit 9 are the 2008 version of the</p> <p>18 guidelines; is that right?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Turn to page 11.</p> <p>21 <b>A Yes.</b></p> <p>22 Q Under Guidelines per Cage Production</p>	<p style="text-align: right;">400</p> <p>1 <b>A Correct.</b></p> <p>2 MS. SCHWARTZ: Objection. Form.</p> <p>3 Q Does this practice refer to</p> <p>4 backfilling?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Are the scientific advisory committee's</p> <p>7 views on backfilling at all related to the effect</p> <p>8 on supply that backfilling has?</p> <p>9 MS. SCHWARTZ: Objection. Form.</p> <p>10 <b>A No.</b></p> <p>11 MS. SCHWARTZ: Calls for speculation.</p> <p>12 <b>A No. The rationale is noted in another</b></p> <p>13 <b>exhibit in a letter based on welfare, behavior</b></p> <p>14 <b>issues, and disease problems.</b></p> <p>15 Q And aside from welfare and behavior</p> <p>16 issues and disease problems, as you just said,</p> <p>17 was the scientific advisory committee's</p> <p>18 opposition to backfilling based on anything else?</p> <p>19 MS. SCHWARTZ: Objection. Form.</p> <p>20 <b>A The opposition is stated in the letter,</b></p> <p>21 <b>and it's those two items, as I recall the letter.</b></p> <p>22 <b>And it is -- it is Exhibit 11. "Welfare is</b></p>
<p style="text-align: right;">399</p> <p>1 Systems. Would you mind reading Point No. 1 into</p> <p>2 the record.</p> <p>3 <b>A "Cage configuration and equipment</b></p> <p>4 <b>maintenance should be such that manure from birds</b></p> <p>5 <b>in upper cage levels does not drop directly on</b></p> <p>6 <b>birds in lower-level cages."</b></p> <p>7 Q Is that guideline consistent with the</p> <p>8 scientific advisory committee's recommendation?</p> <p>9 MS. SCHWARTZ: Objection. Form.</p> <p>10 <b>A Yes.</b></p> <p>11 Q You can put that document aside.</p> <p>12 Turn your attention to the document</p> <p>13 that's been marked as Exhibit 30.</p> <p>14 Do you have Exhibit 30 in front of you?</p> <p>15 <b>A I do.</b></p> <p>16 Q You were asked about the sentence in</p> <p>17 this document reading, "We need to support UEP in</p> <p>18 their quest to terminate this practice." Do you</p> <p>19 see that?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And "this practice" refers to</p> <p>22 backfilling; is that right?</p>	<p style="text-align: right;">401</p> <p>1 <b>compromised for a couple of reasons, but the main</b></p> <p>2 <b>reason is welfare is compromised."</b></p> <p>3 Q Thank you. You can put Exhibit 30</p> <p>4 aside.</p> <p>5 If I could draw your attention to</p> <p>6 Exhibit 31.</p> <p>7 <b>A Okay.</b></p> <p>8 Q I'm not sure that you were actually</p> <p>9 asked any questions about Exhibit 31 other than</p> <p>10 whether or not you recalled this email chain.</p> <p>11 But I will ask you a question about the third</p> <p>12 email down from yourself to Gene Gregory. You</p> <p>13 say in this email, "The advisory committee is</p> <p>14 adamant about the need for proper welfare for all</p> <p>15 birds." And the word "all" is in all capital</p> <p>16 letters. Do you see that sentence?</p> <p>17 <b>A Exhibit 31?</b></p> <p>18 Q I believe so.</p> <p>19 <b>A Yes, I see it now. I'm with you.</b></p> <p>20 Q Take a minute to refresh yourself as to</p> <p>21 this, but what did you mean when you wrote that</p> <p>22 sentence?</p>

## HIGHLY CONFIDENTIAL

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102 (Pages 402 to 405)

<p style="text-align: right;">402</p> <p>1       <b>A</b> As the committee -- what the committee</p> <p>2       had learned was being proposed is that an</p> <p>3       alternative program -- we're not talking about</p> <p>4       transition, phasing, or anything -- but an</p> <p>5       alternative program was being proposed that only</p> <p>6       the base humane standards would be implemented if</p> <p>7       a consumer demanded it. And if the market didn't</p> <p>8       demand it, a producer could produce eggs in</p> <p>9       conditions lower than our standards, which we</p> <p>10      deemed to be the minimum humane standards for</p> <p>11      caged hens.</p> <p>12      <b>So in the context of UEP, we suggested</b></p> <p>13      <b>that that -- that we want proper welfare for all</b></p> <p>14      <b>birds.</b></p> <p>15      <b>Q</b> And is that a reason why you say that</p> <p>16      you were happy to speak with Walmart?</p> <p>17      <b>MS. SCHWARTZ:</b> Objection. Form.</p> <p>18      <b>A</b> I was happy to speak with anyone</p> <p>19      about -- in opposition of a program that would</p> <p>20      condone long-term poor animal welfare clearly not</p> <p>21      supported by science. That program proposed --</p> <p>22      flew in the face of our science-based guidelines.</p>	<p style="text-align: right;">404</p> <p>1       mid 2000s, there were -- significant number of</p> <p>2       producers did not want to see the guidelines</p> <p>3       fully implemented. That's why an alternate</p> <p>4       program was proposed, because people did not want</p> <p>5       to comply with the base animal welfare</p> <p>6       guidelines.</p> <p>7       <b>Q</b> What is the difference --</p> <p>8       Go ahead.</p> <p>9       <b>Q</b> What is the difference, in your view,</p> <p>10      for a standard implemented by one customer versus</p> <p>11      a standard that's implemented industry-wide?</p> <p>12      <b>MS. SCHWARTZ:</b> Objection. Form.</p> <p>13      <b>MR. DAVIS:</b> What's your objection?</p> <p>14      <b>MS. SCHWARTZ:</b> It, I don't think,</p> <p>15      properly states what he said earlier, or earlier</p> <p>16      today, but he's welcome to answer that question</p> <p>17      if he has personal knowledge.</p> <p>18      <b>A</b> There is a big difference -- having</p> <p>19      served on both advisory boards, chairing one and</p> <p>20      served on the other, there is a big difference</p> <p>21      when you have an organization like McDonald's</p> <p>22      that can say a date on out -- not tomorrow, but I</p>
<p style="text-align: right;">403</p> <p>1       <b>Q</b> You were asked earlier a series of</p> <p>2       questions about the feasibility of one or a small</p> <p>3       number of producers producing according to a</p> <p>4       standard for McDonald's that might be feasible</p> <p>5       for that one producer or two or three producers</p> <p>6       but may not be feasible industry-wide.</p> <p>7       <b>MS. SCHWARTZ:</b> Objection. Form.</p> <p>8       <b>Q</b> Do you recall that testimony?</p> <p>9       <b>A</b> Yes.</p> <p>10      <b>Q</b> So can it be -- might it be practical</p> <p>11      for one customer's suppliers to adopt a certain</p> <p>12      animal welfare standard, whereas it would not be</p> <p>13      practical for that standard to be adopted</p> <p>14      industry-wide?</p> <p>15      <b>MS. SCHWARTZ:</b> Objection.</p> <p>16      <b>A</b> Absolutely. And the committee -- the</p> <p>17      committee recognized that, and the committee --</p> <p>18      there were several committee members that were on</p> <p>19      both advisory panels, and its apples and oranges.</p> <p>20      <b>Q</b> Why?</p> <p>21      <b>A</b> Especially -- again, I remind you that</p> <p>22      during those early years, all the way into the</p>	<p style="text-align: right;">405</p> <p>1       can't remember the time line -- but you have to</p> <p>2       abide by that.</p> <p>3       And, of course, I don't know the</p> <p>4       details, but they do their due diligence and they</p> <p>5       know their -- that the suppliers are going to be</p> <p>6       able to comply or they would have given a longer</p> <p>7       time line.</p> <p>8       So where you have a B-to-B</p> <p>9       relationship, I'm going to provide eggs to you,</p> <p>10      here are the conditions under which I will sign a</p> <p>11      contract and buy your eggs, that's different than</p> <p>12      a voluntary -- an organization of which the</p> <p>13      members are voluntary members.</p> <p>14      On top of that, again, you have a group</p> <p>15      of members that are not unanimous. While the</p> <p>16      board unanimously approved our science-based</p> <p>17      guidelines, there were many members who did not</p> <p>18      want to do this. A lot of members that are in</p> <p>19      the fluid egg business, in the breaker market,</p> <p>20      they had no customer impetus to do this, and they</p> <p>21      had no -- they wanted any way not to implement</p> <p>22      the science-based guidelines.</p>

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103 (Pages 406 to 409)

<p style="text-align: right;">406</p> <p>1 Q You talked about when McDonald's 2 implemented its standards the number of producers 3 that could meet those guidelines dropped; is that 4 accurate?</p> <p>5 A Yes. And that's not based on 6 information that I'm divulging that's 7 confidential to McDonald's. It was what I had 8 heard and ascertained, so I'm not sure of the 9 validity. But I believe at about the time -- I 10 think it's fairly common and understood knowledge 11 that regardless of whether it was 26 down to a 12 fewer number, the number of suppliers for 13 McDonald's dropped. Now, was it directly related 14 to the animal welfare guidelines? I don't know. 15 I would suggest that it contributed heavily.</p> <p>16 Q When a customer implements its own 17 guidelines, it only needs a certain number of 18 producers to be able to meet those guidelines; 19 fair?</p> <p>20 MS. SCHWARTZ: Objection. Form.</p> <p>21 A When a retail -- when a grocery store, 22 a fast food chain, when they implement</p>	<p style="text-align: right;">408</p> <p>1 multiple customers and one customer. 2 Q So they might be very different? 3 A They might be very different, and they 4 are very different. 5 Q I believe that you were asked about 6 UEP's contributions to your discretionary 7 account. Do you recall that line of questioning? 8 A Yes. I do recall a couple of instances 9 I was asked about that. 10 Q What is your discretionary account -- 11 or I should say what was your discretionary 12 account while you were at Michigan State? 13 A All administrators in universities, 14 whether they're president on down, your goal is 15 to have a discretionary account. These are funds 16 that are given by individuals where they don't 17 have a purpose. Most gifts to a university have 18 a specific purpose: For a scholarship, for a 19 building, for this or that. To have 20 discretionary funds that you can use for any 21 program you want is very, very significant. So 22 it's not atypical for a department head or a dean</p>
<p style="text-align: right;">407</p> <p>1 guidelines, they have to know that they have the 2 supply, or the guidelines are false advertising. 3 Q They need to be able to supply 4 themselves? 5 A Exactly. 6 Q And when an industry implements 7 guidelines, what are its concerns? 8 A When an industry is implementing 9 guidelines, if industry decided to implement the 10 guidelines, what's going to influence how fast 11 you can implement? Will people -- will people 12 pay for -- do they want that supply? 13 Q So are an industry's concerns and a 14 single customer's concerns -- 15 MS. SCHWARTZ: Objection. Form. 16 A And the main thing is it's a voluntary 17 organization. 18 Q Sorry. Let me just ask the question. 19 Sure. 20 Q Are an industry's concerns and one 21 customer's concerns necessarily the same? 22 A That's correct. You've got multiple,</p>	<p style="text-align: right;">409</p> <p>1 to ask a company to make a contribution. They 2 say yes or they say no. 3 Q What are those funds ultimately used 4 for? 5 A At the discretion of the department 6 chair. Or, in this case, when I was dean. I 7 can't tell you what I used them for. They went 8 into a larger pool of discretionary dollars. 9 Q Are they used for things related to the 10 school? 11 A They are absolutely. Regardless of -- 12 if you look at university guidelines, they're 13 very similar. Different pools of money have 14 different guidelines and restrictions. The 15 discretionary funds, there's a certain range of 16 things that it can be used for within those 17 guidelines, and it is discretionary. So it was 18 used for the college. 19 Q I want to clear up one thing that may 20 have come out wrong. Did you say that it is or 21 is not atypical for a department head or dean to 22 ask a company to make a contribution?</p>

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104 (Pages 410 to 413)

<p style="text-align: right;">410</p> <p>1       <b>A</b> It is typical and good practice for</p> <p>2       <b>administrators and university personnel to ask</b></p> <p>3       <b>companies, alumni, anyone for money. I spend</b></p> <p>4       <b>about 50 percent of my time asking people for</b></p> <p>5       <b>money in my current job.</b></p> <p>6       Q You were also asked some questions by</p> <p>7       Mr. Patton over the phone about a video, that</p> <p>8       wasn't showed, which he says related to Sparboe</p> <p>9       Farms. Do you recall that line of questioning?</p> <p>10       <b>A Yes.</b></p> <p>11       Q And do you know whether or not Sparboe</p> <p>12       Farms was a UEP-certified company at various</p> <p>13       points in time?</p> <p>14       <b>A I knew, and I read lists, but I cannot</b></p> <p>15       <b>tell you with any precision when or when they</b></p> <p>16       <b>were not a UEP company. My recollection is that</b></p> <p>17       <b>there were times when they were not, but I don't</b></p> <p>18       <b>recall the details.</b></p> <p>19       Q And do you know anything about the</p> <p>20       video that Mr. Patton referenced and whether or</p> <p>21       not Sparboe was UEP certified at the time that</p> <p>22       video was made?</p>	<p style="text-align: right;">412</p> <p>1       <b>A This is the publication which codifies</b></p> <p>2       <b>the science-based guidelines at the time of</b></p> <p>3       <b>printing.</b></p> <p>4       MR. DAVIS: Can we go off the record</p> <p>5       for one minute.</p> <p>6       THE VIDEOGRAPHER: We are going off the</p> <p>7       record. The time is 5:36 p.m.</p> <p>8       (A discussion was held off the record.)</p> <p>9       THE VIDEOGRAPHER: We're back on the</p> <p>10       record. The time is 5:37 p.m.</p> <p>11       MR. DAVIS: Dr. Armstrong, that is all</p> <p>12       the questions that I have for you. Thank you</p> <p>13       very much for your time today.</p> <p>14       MR. KEALEY: Everybody on the phone</p> <p>15       done?</p> <p>16       THE VIDEOGRAPHER: This concludes the</p> <p>17       deposition of Dr. Jeffrey Armstrong. The time is</p> <p>18       5:38 p.m., and we are off the record.</p> <p>19       THE REPORTER: Signature? Yes.</p> <p>20       MR. KEALEY: Yes, please. Send it to</p> <p>21       me, and I'll take care of the next steps.</p> <p>22       (The deposition concluded at 5:38 p.m.)</p>
<p style="text-align: right;">411</p> <p>1       MS. SCHWARTZ: Objection. Form and</p> <p>2       calls for speculation.</p> <p>3       <b>A I recall vaguely that they were not at</b></p> <p>4       <b>the time, but I'm not certain.</b></p> <p>5       <b>(Deposition Exhibit 39 was marked for</b></p> <p>6       <b>identification.)</b></p> <p>7       Q I'll show you what's been marked as</p> <p>8       Exhibit 39. Exhibit 39 bears Bates label</p> <p>9       UE0605112.</p> <p>10       Dr. Armstrong, do you recognize Exhibit</p> <p>11       39?</p> <p>12       <b>A Yes, I do.</b></p> <p>13       Q I'm just going to ask you one or two</p> <p>14       questions about it.</p> <p>15       This is dated March 15th, 2004. You</p> <p>16       spoke earlier about publication in Feedstuffs</p> <p>17       which promulgated the scientific advisory</p> <p>18       committee's recommendations; do you recall that</p> <p>19       testimony?</p> <p>20       <b>A Yes.</b></p> <p>21       Q Is this that publication to which you</p> <p>22       referred?</p>	<p style="text-align: right;">413</p> <p>1       AND FURTHER THE DEPONENT SAITH NOT.</p> <p>2</p> <p>3       ACKNOWLEDGMENT OF DEPONENT</p> <p>4</p> <p>5       I, _____, do hereby</p> <p>6       acknowledge that I have read and examined the</p> <p>7       foregoing testimony, and the same is a true, correct</p> <p>8       and complete transcription of the testimony given by</p> <p>9       me, and any corrections appear on the attached Errata</p> <p>10       Sheet signed by me.</p> <p>11</p> <p>12</p> <p>13       _____</p> <p>14       (DATE)                      (SIGNATURE)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">414</p> <p>1 STATE OF INDIANA ) 2 ) SS: 3 COUNTY OF MARION ) 4 I, Tara Gandel Hudson, RPR, CRR, CSR, a Notary 5 Public in and for the County of Marion, State of 6 Indiana at large, do hereby certify that the 7 deponent herein, JEFFREY ARMSTRONG, PH.D., was by 8 me first duly sworn to tell the truth, the whole 9 truth, and nothing but the truth in the 10 aforementioned matter; 11 That the foregoing deposition was taken on 12 behalf of the Defendants United Egg Producers and 13 United States Egg Marketers at the offices of 14 STUART &amp; BRANIGIN, 300 Main Street, Suite 900, 15 Lafayette, Tippecanoe County, Indiana, on the 13th 16 day of March, 2014, commencing at the hour of 8:38 17 a.m., pursuant to the Federal Rules of Civil 18 Procedure and the Kansas Rules of Civil Procedure; 19 That said deposition was taken down in 20 stenograph notes and afterwards reduced to English 21 under my direction, and that transcript is a true 22 record of the testimony given by the said deponent;</p>	<p style="text-align: right;">415</p> <p>1 and that the signature of said deponent to his 2 deposition was requested; 3 That the parties were represented by their 4 counsel as aforementioned. 5 I do further certify that I am a disinterested 6 person in this cause of action; that I am not a 7 relative or attorney of either party, or otherwise 8 interested in the event of this action, and am not 9 in the employ of the attorneys for either party. 10 IN WITNESS WHEREOF, I have hereunto set my 11 hand and affixed my notarial seal this _____ day 12 of _____, 2014. 13 14 _____ 15 NOTARY PUBLIC 16 17 My Commission Expires: 18 April 9, 2016 19 20 County of Residence: 21 Marion 22</p>
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